TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902. 1904.

No. 126. 10.

HENRY LOCKHART, APPELLANT,

vs.

E. C. LEEDS, J. A. JOHNSON, JULIA A. JOHNSON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED AUGUST 22, 1903.

(18,603.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 121.

HENRY LOCKHART, APPELLANT,

vs.

H. C. LEEDS, J. A. JOHNSON, JULIA A. JOHNSON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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1 Be it remembered, that heretofore, on to-wit the 21st day of December, A. D. 1899, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, a transcript of record, which said transcript of record, was and is in words and figures, following, to-wit:—

2 Be it remembered, that heretofore, to-wit, on the 26th day of May, 1894, there was filed in the office of the clerk of the district court of the second judicial district of the Territory of New Mexico, within and for the county of Bernalillo, plaintiff's bill of complaint, and exhibits thereto attached, which said complaint is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

In the District Court of the Second Judicial District of the Territory of New Mexico, Sitting within and for the County of Bernalillo for the Trial of Causes Arising under the Laws of the Territory of New Mexico, in Chancery Sitting.

To the Honorable Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico and judge of the said district court.

Henry Lockhart, a resident of the county of Bernalillo, and Territory of New Mexico, brings this his bill of complaint against, and complains of H. C. Leeds, J. A. Johnson, Julia A. Johnson, his wife, James Q. Wills, Charles Pilkey, Frank Fagaly, Lee Walker, and Charles Bonsall, receiver, impleaded with said defendants by leave of court first had and obtained, William B. Childers and Edward W. Dobson, all residents of the said county of Bernalillo, defendants in this cause, and humbly complaining, shows unto your honor, that heretofore, to-wit, on the 7th day of May, 1893, a certain agreement in writing bearing said date was made and entered

3 into by and between your orator and one Benjamin Johnson, by the name and description of Benj. Johnson, with the defendant Charles S. Pilkey, a copy whereof is herewith filed, marked "Exhibit A," and made a part of this your orator's bill of complaint, wherein and whereby said Pilkey contracted and agreed with your orator and the said Benjamin Johnson to enter into a copartnership with them for the purpose of discovering, locating, and operating mining claims; and it was thereby contracted and agreed by and between said parties that the said Pilkey should prospect and locate such veins, lodes or placers as he might discover or know the existence of, containing valuable ore or minerals, in the name of and for the joint benefit of all the said parties to said agreement in the proportion of one-third interest to said defendant Pilkey and an undivided two-thirds interest to your orator and the said Benj. Johnson; and your orator and the said Benj. Johnson thereby contracted, in consideration of the premises, to furnish to the said Pilkey at

their expense the following articles and tools, viz: Twenty-five pounds of giant powder, 100 feet of fuse, one box of caps, one hammer, — pounds of drilled steel and one pick; and when he should have sunk or driven a shaft or tunnel four feet by six feet from the lowest level of the surface at its mouth upon such vein and locality as should be designated by them, he should receive in addition to the above property the sum of thirty dollars, less any money for provisions or other articles, except these above named, which should be furnished to him by them prior to the completion of said work; and it was thereby further contracted and agreed that said work should begin within twenty days from the date of the said agreement and should be prosecuted with
4 due diligence to completion and to the satisfaction of the orator and the said Johnson, and that the said Pilkey should furnish to them from time to time at their request samples of all ores and minerals which should be discovered or taken out of any workings by the said Pilkey; and it was thereby further contracted and agreed that it should be at the option of your orator and the said Benjamin Johnson to continue working or abandon any claim located in pursuance with said agreement, at any time they might deem proper and that the said agreement should continue in force and effect for one year from its date and that all discoveries or locations made during that time by said Pilkey should be included and covered by the said agreement; and it was thereby further contracted and agreed that the said Pilkey should have no power to create any debt or make any contract binding the said other parties to said agreement unless by them authorized in writing so to do; and that any concealment by or on the part of the said defendant Pilkey of any discovery by him made or failure upon his part to locate any valuable mineral claim or claims for the purpose of evading the terms of the said agreement, and defrauding your orator and the said Benjamin Johnson, should work a forfeiture of any right or interest, direct or indirect, that the said Pilkey might have or afterwards obtain, to and for the benefit of your orator and the said Benjamin Johnson.

And your orator states that the agreement aforesaid was duly subscribed, executed and delivered by and between the said parties thereto and your orator and the said Benjamin Johnson then and there delivered the said articles and provisions and paid the said money to and for the said Pilkey, and in all respects kept
5 and performed the terms of the said agreement upon their part, and were at all times thereafter ready and willing and offered so to do.

Your orator further states that, at and prior to the date of said agreement, the said parties thereto had knowledge or information of the existence of valuable mineral deposits in the northeasterly portion of the said county of Bernalillo, in the vicinity of the town called Cochiti, and that it was their purpose in pursuance of said agreement that the said Pilkey should prospect, search for, discover,

locate and acquire title to the same for their joint use and benefit in the proportion and upon the terms therein set forth.

And your orator further states that, under and in pursuance of the terms of said agreement, the defendant Pilkey, did thereafter proceed to the aforesaid portion of said county, and did on or prior to the 10th day of July, 1993, find and discover a certain valuable mineral bearing lead, lode, ledge, vein or deposit bearing gold and silver, and did then and there enter upon and take actual, full and peaceable possession of the same, for and on behalf of your orator and the said other parties to said agreement as claimants, discoverers and locators of the same under and in pursuance of the terms of the said agreement, and as evidence thereof, the said Pilkey then and there posted in a conspicuous place upon the said lead, lode, ledge, vein or deposit bearing mineral, a notice of the location thereof bearing the said date, a copy whereof is herewith filed, marked "Exhibit B," and made a part of this your orator's bill of complaint, and marked the boundaries of the said claim upon the ground in such manner that the same could be readily traced and thereafter
6 transmitted to your orator and to said Benjamin Johnson at their request samples of ores and minerals by him taken and extracted from the said mineral bearing lode, lead or ledge so by him discovered and taken possession of as before stated, and did thereafter, in pursuance of the direction of your orator and said Johnson commence to sink a shaft, or cut, upon said mineral bearing lode or ledge to the depth of ten feet from the lowest rim thereof, and your orator is informed and believes and so states that he did so sink said shaft or cut thereupon to mineral in place disclosing a large and valuable deposit of gold and silver bearing ore in place within less than ninety days from the time of taking possession of said lode or ledge as aforesaid; and your orator states that they the said discoverers and locators of said mineral bearing lode or ledge, not then knowing whether the said mineral claim was situated upon public domain of the United States and was free and open to location under the mining laws of the United States, performed the required acts of location under said laws and the laws of this Territory, or were ready, able and willing so to do and would have so done except for the wrongful, fraudulent and unlawful acts of the defendants hereinafter mentioned.

Further complaining, your orator shows unto your honor that on or about October 1st, 1893, the defendant Pilkey, while so in possession of the said lead, lode or ledge, under and in pursuance of said agreement, wrongfully and unlawfully conspired, combined and confederated with the defendants H. C. Leeds, J. A. Johnson, Frank Fagaly, and Lee Walker to defraud your orator and the said Benjamin Johnson of their interest in and title to the said mine and minerals discovered and possessed by them as
7 aforesaid, and of which the said Pilkey was then in possession under the agreement aforesaid, and that in pursuance of said conspiracy and confederation, on, to-wit, October 1st, 1893, the precise date whereof being unknown to your orator, and agreement was

made and entered into by the defendants Fagaly, J. A. Johnson, Walker and Leeds, the defendant Julia Johnson being a party to and having some interest under the said agreement, and the defendant Pilkey, being a party thereto, by which it was agreed that the said Pilkey in violation and fraud of the rights of your orator in and to the said mine of which he was then in possession as aforesaid, by him discovered and held under said agreement, should deliver—surrender possession to said last named defendants without the knowledge and consent of your orator and the said Johnson, and that they should do and perform all other acts deemed necessary for that purpose, and that in pursuance of said fraudulent combination and conspiracy, the defendants Frank Fagaly, J. A. Johnson, Lee Walker, and H. C. Leeds, together with the defendant J. Q. Wills, caused and procured the defendant Pilkey to stop work upon the said mines under his said agreement and to fail and neglect to record the said location notice, so by him posted thereon as aforesaid, and the said defendants or some of them wrongfully removed the said location notice from said claim and said defendants covered up or concealed the said workings thereon, theretofore done and performed by defendant Pilkey as aforesaid, and entered into and upon the said lead, lode, ledge and deposit bearing gold and silver, mentioned and described in the location notice heretofore described as the "Sampson" mine, and

8 denied and still deny that your orator had or has any interest therein and thereafter, having so procured possession of the same, the said defendants in pursuance of said confederacy, caused to be posted upon said mine a location notice, and filed the same for record in the recorder's office of said county on, to wit, December 30th, 1893, and caused the same to be there recorded in Book E, page 576, of mining records and a copy whereof is herewith filed, marked "Exhibit C," and made a part of this bill, and thereby the said defendants claim to have located the said lead, lode or ledge bearing gold and silver and other minerals, so first discovered, located and held by the said Pilkey, and described in the said location notice by him thereon posted as aforesaid as the "Sampson mine" for the benefit of themselves as locators under the mining laws of the United States and called and designated the same as the "Washington" lode, and it was agreed in pursuance of said federation and for the purpose of concealing from your orator the interest of said Pilkey in said pretended location that each of the four last named defendants should be entitled to a one-fifth interest in said mine, and the said Pilkey should be entitled to the remaining one-fifth, but that said last named interest should be covered up and concealed.

Your orator further states that the said Benjamin Johnson has since conveyed to him all his interest in and to the said Sampson location and mine, and your orator has become and now is the owner of the title and interest of the said Benjamin Johnson.

Further complaining your orator states upon his information and belief that the said mine called and known as the "Sampson" mine is situated within the exterior boundaries of a tract of land

claimed to have been granted, on August 2nd, A. D. 1728, by
9 the then governor and captain general of New Mexico, under the Crown of Spain, to one Antonio Lucero, and that the same at date of discovery of the said mines by said Pilkey was and now is claimed by certain persons under the said alleged grant, and claims therefore under said grant were at the date of said discovery, and now are pending in the United States Court of Private Land Claims and are undetermined, but your orator is advised by counsel and believes and so states the fact to be that the said alleged grant to the said Antonio Lucero did not effect the donation of sale of the said lode, ledge, or vein bearing gold and silver, so discovered and held by the said Pilkey and called and known as the "Sampson" mine, and that the said Antonio Lucero has not nor have his heirs, representatives or successors had not in any manner nor have they since become entitled in law or in equity to the gold, silver or minerals contained in the said lead, lode or ledge, called and known as the "Sampson" mine; and your orator avers that by virtue of the said prior discovery, possession, working and location of the said mine by said Pilkey, acting under the agreement before mentioned, your orator became and now is equitably entitled to the said gold, silver and minerals therein contained and have and has prior and paramount right and title in and to the same.

Your orator further states that the defendant Wills claims some right or interest in and to the said pretended mining location called and known as the Washington mine derived under or through some of the said other defendants but your orator states that the said Wills and the said Leeds, J. A. Johnson, Julia Johnson, Fagaly and
Walker, at and prior to the time of acquiring any interest in
10 said mine, had full notice and knowledge of the rights of your orator and Benjamin Johnson in and to said mineral deposit and of their said agreement with said Pilkey herein before mentioned, and that in pursuance of the said conspiracy, they committed the acts herein before mentioned and took possession of said mineral deposits, and have ever since except as hereinafter stated held such possession and by violence and threats have hindered and prevented your orator from entering upon the same and from completing the acts of location required by the laws of the United States and of this Territory as he otherwise could and would have done; although your orator is advised and so states that the said mineral deposit is so discovered by said Pileky as aforesaid was not and is not subject to location as a mining claim under and in pursuance of the laws of the United States for the reason that the same is situated as aforesaid within the said alleged private land grant to said Antonio Lucero, but your orator states that by virtue of the said prior discovery, possession and workings of the said lode or mine by said Pilkey under said agreement, he became and was and now is equitably entitled to the said gold, silver and minerals contained in said location called the Sampson mine as against the said defendants or any other person or persons whomsoever except the Government of the United States, and that under and by virtue of mesne convey-

ances your orator has acquired an undivided title and interest as a tenant in common with the other heirs and representatives of said Antonio Lucero in and to the said land included in said alleged grant to said Antonio Lucero, and is lawfully entitled to enter upon and work the said mine.

Your orator further states that here*be*fore the defendant
11 Charles Bonsall in a certain cause pending in this court wherein the defendant James Q. Wills was and is complainant and the defendants Leeds, J. A. Johnson, and Julia Johnson, Wills, Fagaly, Walker and Pilkey, together with one T. B. Mills and J. T. Dougine were and are defendants, was appointed by this honorable court as receiver of the said alleged Washington lode, under the said pretended location thereof by defendants Leeds, J. A. Johnson, Fagaly, Walker and Pilkey, under the name of the "Washington" mine, and that the said Bonsall in pursuance of said order of appointment has entered upon and taken possession of the said Sampson mine and now holds possession of the same as such receiver.

Your orator further states that after the removal by said defendants of the said location notice posted as aforesaid by said Pilkey of the said "Sampson mine," a copy thereof was procured by your orator, of which "Exhibit C" filed herewith is a copy and the same was recorded in the office of the recorder of said county, on December 9th, 1893, in volume F of mining records of said county, folio 7.

Your orator states that by virtue of the premises he became and was and now is the equitable owner of the said mine and gold and silver ores therein contained so discovered, possessed and located by the said Pilkey under the said agreement, and is equitably entitled as against the said defendants to the possession and enjoyment of the same, and that the said pretended location thereof under the name of the Washington mine by and in the names of defendants Leeds, J. A. Johnson, Fagaly and Walker, was and is wholly inoperative and void, and that the defendant Charles Pilkey by reason of his participation in the said fraudulent conspiracy, combination and acts
12 with said other defendants, under and in pursuance of the terms of your orator's said agreement with him, has forfeited all right or interest direct or indirect in and to the said Sampson mine and your orator is equitably the owner of and entitled to the same, and your orator had well hoped that the said defendant would recognize the prior right and title in and to the same and surrender possession to the same and release all claims thereto to your orator, but now so it is that said defendants excepting defendant Bonsall as receiver, combining and confederating together as aforesaid give out and claim in speeches that the said pretended location and location notice of the said alleged "Washington" lode by the said defendants was and is a valid location as against your orator and that your orator has no title or interest in and to the said mine bearing gold, silver and other minerals, so discovered, possessed and located as the "Sampson mine" by the defendant Pilkey as hereinbefore set forth,

and refused to permit your orator to enter upon the said property or to work the same or exercise any acts of possession or ownership thereon.

Your orator therefore prays that the said H. C. Leeds, J. A. Johnson, Julia A. Johnson, his wife, J. Q. Wills, Charles Pilkey, Frank Fagaly, Lee Walker and Charles Bonsall, receiver as aforesaid, may respectively be made part- *of the* defendant to this your orator's bill of complaint, and that they be required to full, true and perfect answers make to all and singular the allegations of this bill, but without oath, their respective answers under oath being hereby waived, and that the receiver be appointed to take possession of the lead, lode, ledge or deposit, bearing gold, silver and other metals, situated within the mining claim or location, in the Cochiti
13 mining district, Bernalillo county, New Mexico, called and known as the "Sampson" mine and mentioned and described in the location notice thereof made by Charles Pilkey, Ben. Johnson and Henry Lockhart, dated July 10th, 1893, and recorded in vol. 5 of mining records of said county, folio 7, on December 9th, 1893, to keep and hold possession thereof until the further order of this court, and that the location and location notice of the said Washington lode by and in the name- Frank Fagaly, Lee Walker, H. C. Leeds, and J. A. Johnson be decreed to be void and of no effect as against your orator, and that the said defendants be enjoined from mining, working or removing from the said "Washington" lode any ore or mineral and your orator be decreed to be the owner of the said ore and mineral contained therein and entitled to possession to the same and for such other and further relief as may be equitable and proper in the premises.

May it please your honor to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendants H. C. Leeds, J. A. Johnson, Julia A. Johnson, his wife, J. Q. Wills, Charles Pilkey, Frank Fagaly, Lee Walker, and Charles Bonsall, receiver of the Washington lode, requiring them and each of them under a certain penalty therein named to be and appear before this honorable court at the time and place therein specified then and there to answer the allegations of this bill and to stand to abide and perform the order of the court in the premises.

May it please your honor to grant unto your orator the writ of injunction enjoining the said defendants and their respective agents and employés from in any manner interfering with the pos-
14 session of the said receiver of the said "Sampson mine" and from extracting or removing any ore or mineral therefrom or from claiming or exercising any ownership or title of, in or to the said ore or mineral, under color or by virtue of the location of the said "Washington lode" by or in the name of the defendants Frank Fagaly, Lee Walker, H. C. Leeds and J. A. Johnson, until the further order of this court.

(Signed) HENRY LOCKHART,
WARREN, FERGUSSON & BRUNER,
Sols. for Complainant.

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

Henry Lockhart, being duly sworn, says that he is the complainant in the above and foregoing bill of complaint, by him subscribed, and has heard read and knows the contents thereof and the matters and things therein contained are true of his own knowledge, except as to the matters and things therein stated to be upon information and belief, and as to those matters he believes them to be true.

(Signed) HENRY LOCKHART.

Subscribed and sworn to before me this 25th day of May, 1894.

(Signed) MEYLERT BRUNER,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed: No. 3888. Territory of New Mexico. County of Bernalillo. In the district court, second judicial district. Henry Lockhart *vs.* H. C. Leeds *et al.* Bill of complaint. Filed in my office this 26th day of May, 1894. O. N. Marron, clerk.)

"EXHIBIT A."

Articles of Agreement.

For and in consideration of the sum of one dollar to him
15 in hand paid, the receipt of which is hereby acknowledged, Charles Pilkey, party of the first part, agrees with Henry Lockhart and Benjamin Johnson, parties of the second part, all of whom are residents of Bernalillo county, New Mexico, to enter into a partnership for the purpose of discovering, locating and operating mining claims.

The considerations of this agreement are that the said first party shall prospect and locate such veins and lodes and placers as he may discover or know the existence of containing valuable ores or minerals in the name of and for the joint benefit of all the parties hereto; in the proportion of one-third interest to said first party and an undivided two-thirds interest to the second parties.

The said second parties are to furnish the said first party at their expense with the following articles and tools, viz:

Twenty-five pounds of giant powder, 100 feet of fuse, one box of caps, one hammer, —— lbs. of drills steel, and one pick, and when he shall — sunk or driven a shaft or tunnel four feet by six feet in a vein of mineral bearing quartz to a depth of twenty feet from the lowest level of the surface at its mouth, such vein and locality to be designated by said second parties, he shall receive in addition the sum of thirty dollars, less any moneys or provisions or other articles except as above enumerated.

Said work to be begun within twenty days from the date of this agreement and prosecuted with due diligence to the completion and to the satisfaction of the said second parties. The said first party to furnish the second parties from time to time at their request samples of all ores and minerals discovered or taken out of any workings.

16 It shall be at the option of the said second parties to continue working or abandon any claim located at any time they deem proper. This agreement to continue in force and effect for one year from its date, all discoveries or locations made during that time by said party to be covered by this agreement. The said first party has no power to create any debt or make any contract binding the second parties to this agreement unless authorized to do so in writing by the said second parties. Any concealment of a discovery or failure to locate of a valuable mineral claim or claims for the purpose of evading the terms of this agreement and defrauding the said second parties shall work a forfeiture of any right or interest, direct or indirect, that such first party might have or afterwards obtain to and for the benefit of the said second parties.

Dated May 7th, 1893.

(Signed) CHARLES PILKEY. [SEAL.]
" HENRY LOCKHART. [SEAL.]
" BENJ. JOHNSON. [SEAL.]

Witness:
W. C. HEACOCK.

(Endorsed on back: "Article of agreement—Charles Pilkey and Lockhart and Johnson." Also seal and certificate of recordation, signed by J. W. Harris, recorder, that same was filed for record on the 7th day of December, 1893, at 11 o'clock a. m. in vol. E. of mining records of Bernalillo county page 562.)

"EXHIBIT B."

The undersigned, —— ——, citizens of the United States, over the age of 21 years, having complied with all the requirements of the United States and territorial laws now in force relative to mineral locations, and with all local customs, and
17 regulations in force relative to such locations, have located and do hereby claim by right of discovery and location fifteen hundred (1500) linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with three hundred (300) feet of surface ground along and on each side of said 1500 feet. The claim hereby located is situate in the Cochiti dis. mining district, county of Bernalillo, Territory of New Mexico, and is more particularly described as follows:

Beginning at the monument of stones (monument No. 1) erected on said lode, lead and deposit, said monument No. 1 being the north end monument of this claim, and being the center of the north end line of said claim; thence west 300 feet to a monument of stones (No. 2); thence south 1500 feet to a monument of stones (No. 3); thence east 300 feet to a monument of stones (No. 4), said monument No. 4 being the south end monument and the center of the south end line of this claim; thence east 300 feet to a monument of stones (No. 5); thence north 1500 feet to a monument of stones (No. 6); thence west 300 feet to the place of beginning.

And for further description the lode is of grayish quartz from three to five feet wide, and can be traced for (1000) yards, dips into the mountain.

This claim was located July 10th, A. D. 1893, and shall be known as the "Sampson mine." A copy of this notice is placed on monument No. — in the center of claim by a pine tree with bark of- on south side.

CHARLES PILKEY,
BEN. JOHNSON,
HENRY LOCKHART,
Locators.

18 Notice posted on claim in presence of—
IDA PILKEY,
LEE DUDLEY.
Witnesses.

(Endorsed: Name of claim, "Sampson mine." Names of locators, Charles Pilkey, Ben. Johnson, Henry Lockhart. Territory of New Mexico, county of Bernalillo, *ss.* I hereby certify that this instrument was filed for record on the 9th day of December, A. D. 1893, at 11 o'clock a. m., and recorded December 19th, A. D. 1893. J. W. Harris, recorder.)

"EXHIBIT C."

Notice of Location.

The undersigned, citizens of the United States, over the age of twenty-one years, having complied with all the requirements of the United States and territorial laws now in force relative to mineral locations, and with all local customs and regulations in force relative to such locations, have located, and do hereby claim by right of discovery and location 1500 linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with 300 feet of surface ground along and on each side of said 1500 feet.

The claim hereby located is situated in the Cochiti mining district, county of Bernalillo, New Mexico, and more particularly described as follows:

Beginning at post No. 1 erected on said lode, lead and deposit, said post being the north end center monument of this claim, and being the center of the north line of said claim marked ("north end center post"); thence east 300 feet to the northeast corner
19 post No. 2, marked "northeast corner post;" thence south 1500 feet to post No. 3, southeast corner post, marked "southeast corner post;" thence east 300 feet to post No. 4, marked "south end center post;" thence 300 feet to post No. 5, marked "southwest corner post;" thence north 1500 feet to post No. 6, marked "northwest corner post;" thence east 300 feet to the place of beginning. All of said marks being in pencil, and the discovery shaft of said claim being located within the exterior lines thereof and on the lode or lead located and upon which said discovery shaft is posted a copy

of this notice of location, and in the monument of stones around all of said post referred to are piles of stones.

Said claim being about two miles north of Peralta mountain, Cochiti mining district, Bernalillo county, New Mexico.

This claim is located in the said mining district, about 60 feet from the north end center where location line paper is nailed to pine tree about 60 feet south of north end center line. Direction from a big pine tree marked with a blaze.

This location is an amended location of said claim, the original thereof having been made on the 20th day of October, A. D. 1893. Said claim shall be known as the "Sunny South lode." Located by F. Fagaly, J. A. Johnson, H. C. Leeds, Lee Walker, locators.

Filed for record December 30th, 1893, at 10 a. m., and recorded January 15th, 1894.

"EXHIBIT C."

The undersigned, —— —— citizens of the United States and over the age of twenty-one years, having complied with all requirements of the United States and territorial laws now in force relative to mineral locations, and with all local customs and regulations in force relative to such locations, ha- located, and do hereby claim the right of discovery and location, fifteen hundred (1500) linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with three rundred feet of surface ground along and on each side of said 1500 feet. The claim hereby located is situate in the Cochiti mining district, county of Bernalillo, Territory of New Mexico, and is more particularly described as follows:

Beginning at a monument of stones (monument No. 1), erected on said lode, lead and deposit; said monument No. 1 being the north end monument of this claim and being the center of the north end line of said claim; thence west 300 feet to a monument of stones (No. 2); thence south 1500 feet to a monument of stones (No. 3); thence east 300 feet to a monument of stones (No. 4), said monument No. 4 being the south end monument and the center of the south end line of this claim; thence 300 feet to a monument of stones (No. 5); thence north 1500 feet to a monument of stones (No. 6); thence west 300 feet to the place of beginning.

And for further description the lode is of grayish quartz, from three to five feet wide, and can be traced for 1000 yards. Dips into the mountain.

This claim was located July 10th, A. D. 1893, and shall be known as the Sampson mine. A copy of this notice is placed on monument No. — in the center of the claim by a pine tree with bark off on the south side.

CHAS. PILKEY,
BEN JOHNSON,
HENRY LOCKHART,
Locators.

21 Notice posted on the claim in presence of
ADA PILKEY,
LEE DUDLEY,
Witnesses.

(Endorsed on back: Notice of mining location. Name of claim, "Sampson." Name of locators, Charles Pilkey, Ben Johnson, Henry Lockhart. Filed for record this — day of —— A. D. 189–. —— recorder. Territory of New Mexico, county of Bernalillo. This instrument was filed for record on the 9th day of December, 1893, at 11 o'clock a. m. Recorded in volume F of mining records of said county, folio 7. J. W. Harris, recorder.)

And thereafter, on, to-wit, the 10th day of July, 1894, there was filed in the office of the said clerk of said court, in said cause, the appearance of Lee Walker, which said appearance is in words and figures following, to-wit:

In the District Court, Bernalillo County.

HENRY LOCKHART
vs.
LEEDS, WALKER, ET AL. } No. —.

Chancery, for injunction.

Now comes Lee Walker, by his attorney, W. C. Heacock, and enters his appearance in the above entitled cause, and waives issuance and service of process therein.

(Signed) W. C. HEACOCK,
Att'y for Lee Walker.

(Endorsed: No. 5888. In the district court, Bernalillo county. Henry Lockhart *vs.* Leeds, Walker *et al.* Appearance of Lee Walker. W. C. Heacock, attorney for Lee Walker. Filed in my office this 10th day of Jul-, 1894. O. N. Marron, clerk.)

22 And thereafter, on, to-wit, the 12th day of July, 1894, there was filed in the office of the clerk of said court, in the said cause the appearance of defendants, which said appearance is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

HENRY LOCKHART
vs.
H. C. LEEDS ET AL. } No. —.

Now comes the defendants, H. C. Leeds, J. A. Johnson, Julia Johnson, J. Q. Wills, and Charles Bonsall, by Childers and Dobson,

their solicitors, and enter their appearance therein, and waived the issuance and service of process on them, and the defendants William B. Childers and Edward W. Dodson, also defendants in the above cause, hereby enter their appearance in said cause.

Said appearance so entered to be as of the first Monday in July, 1894.

(Signed) CHILDERS & DOBSON,
Solicitors for the Above-named Defendants.

(Endorsed: No. 3888. District court, Bernalillo county. Henry Lockhart *vs.* H. C. Leeds *et al.* Def'ts' appearance. Childers & Dobson, sol's for within named def'ts. Filed in my office this 12th day of Jul-, 1894. O. N. Marron, clerk.)

And thereafter, on, to-wit, the 12th day of July, 1894, there was filed in the office of the said clerk of said court, in said cause, the defendants' demurrer, which said demurrer is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

In the District Court, Second Judicial District.

HENRY LOCKHART, Complainant,
vs.
23 H. C. LEEDS, J. A. JOHNSON, JULIA JOHNSON, J. Q. WILLS, Charles Pilkey, Frank Fagaly, Lee Walker, Chas. Bonsall, E. W. Dobson, and W. B. Childers, Defendants.

And now come the above named defendants, H. C. Leeds, J. A. Johnson, Julia Johnson, and J. Q. Wills, and Chas. Bonsall, by their solicitors, Childers W. B., and E. W. Dobson, and the defendants Chas. Pilkey and Lee Walker, by their solicitor, W. C. Heacock, and defendants W. B. Childers and E. W. Dobson, in their own proper persons, by protestation, not confessing or acknowledging any of the matters and things in said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth, and alleged; and demur to said bill and for causes of demurrer allege the following:

1. Because the bill does not allege that the defendants, Fagaly, Johnson, Leeds and Walker entered in and upon said mining claim at any time prior to the 10th day of October, 1893, that is to say, within three months after said mine is alleged to have been located under the name of Sampson.

2. Because it appears from the allegations in complainant's bill that no valid location notice was ever posted upon the surface of said claim, or recorded in the recorder's office of the proper county, as required by law.

3. Because it does not appear from said bill that complainant and

his co-locators ever did the work required by law to be done within three months after taking possession of said claim, or otherwise complied with the requirements of the law, as to perfecting mining locations.

4. Because the agreement alleged to have been made be-
24 tween complainant and said Johnson with one Pilkey was subject to revocation by either party thereto at any time and the facts alleged in the bill amounted to an abandonment of said alleged Sampson claim under the terms of said alleged agreement.

5. Because it does not appear from said bill when the complainant acquired an undivided interest in said alleged grant with the heirs of Antonio Lucero, deceased, or what the nature, extent and amount of said interest is, or through what *mean* conveyance it was acquired.

6. Because it does not appear that at the time the alleged entry by defendants Fagley, Walker, Leeds and Johnson was made on said mining claim, that the complainant or his co-locators under the alleged Sampson location were in possession of the said mining claim, or any part thereof or had any lawful right to the possession thereof.

7. Because it does not appear from the allegations in said bill that the defendants are not co-tenants with the heirs of Antonio Lucero, deceased, and have a larger interest and a better right to the possession of the surface ground of said claim than the complainant.

8. Because ownership in said alleged grant confers no interest in the mineral thereon, or the right to mine the same.

9. Because the complainant's remedy is at law and the bill does not state a case for the court of equity.

Wherefore these defendants demur to said bill and to all the matters and things contained therein and pray the judgment of this honorable court, whether they shall be compelled to make any further or other answer thereto; and pray to be dismissed with their reasonable costs in this behalf sustained,

25 (Signed) CHILDERS & DOBSON,
W. C. HEACOCK,
Att'ys for Def'ts.
W. B. CHILDERS,
E. W. DOBSON,
In Their Own Proper Persons.

W. B. Childers, of lawful age, counsel for defendants, certifies that the foregoing demurrer is, in his opinion, well founded in point of law.

(Signed) W. B. CHILDERS.

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

W. B. Childers, being duly sworn, upon oath deposes and says that he is a counsel for the defendants for whom the foregoing demurrer is filed, and that said demurrer is not interposed for delay.

(Signed) W. B. CHILDERS.

Subscribed and sworn to before me this 11th day of July, A. D. 1894.

(Signed) E. W. DOBSON,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed: No. 3888. District court, Bernalillo county. Henry Lockhart *vs.* H. C. Leeds *et al.* Demurrer. Filed in my office this 12th day of Jul-., 1894. O. N. Marron, clerk. Childers & Dobson and W. C. Heacock, sol's for def'ts.)

And thereafter, to-wit, on the 14th day of July, 1894, there was filed in the office of the clerk of said court, in said cause, the subpœna in chancery and return of subpœna in chancery, which said subpœna in chancery and return is in words and figures following, to-wit:

The Territory of New Mexico to H. C. Leeds, J. A. Johnson, Julia A. Johnson, J. Q. Wills, Charles Pilkey, Frank Fagaly, Lee
26 Walker, Chas. Bonsall, receiver; William B. Childers, and Edward W. Dobson, Greeting:

You and each of you are hereby commanded: That laying all other matters and things aside, you do cause an appearance to be entered for you in the district court for the county of Bernalillo, in the second judicial district of the Territory of New Mexico, in chancery sitting on the first return day occurring not less than twenty days after service hereof, if the defendants served are residents of said judicial district, or on the first return day occurring not less than thirty days after service hereof, if the defendants served are not resident- of said judicial district, then and there to answer unto a bill filed against you by Henry Lockhart, and that you do answer, concerning such things as shall then and there be alleged against you, and observe what the said court shall direct in this behalf, on pain of an attachment being issued against your person, and such other process of contempt as said court shall award; the first Monday in each month being a return day and each defendant being required to enter his appearance in the office of the clerk of said court on or before the return day on which this writ is returnable, otherwise the bill herein may be taken *pro confesso*.

Witness the Honorable Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof, and the seal of said district court, this 18th day of June, A. D. 1894.

(Signed) O. N. MARRON,
[SEAL.] *Clerk and Register.*

This is a suit in equity; the complainant prays in and by
27 his bill filed in this cause that the receiver be appointed to take possession of the certain mining claim in the Cochiti mining district of the county of Bernalillo, described in the bill of complaint herein; and to keep and hold possession thereof under

the order of the court, and that the location notice of the mining claim in the said district called and known as the Washington in the name of the defendants, Frank Fagaly, Lee Walker, H. C. Leeds, and J. A. Johnson, be decreed to be void and of no effect against complainant, and that the said defendants be enjoined from mining, working or removing from the said Washington lode any ore or mineral and that complainant be decreed to be the owner of the said ore and mineral contained therein and entitled to the possession of the same and for general relief.

Respondents are notified that the first Monday of each month is a return day for process and that they are required to enter their appearance in the office of the clerk and register in chancery of the court on or before the return day of this writ or a decree *pro confesso* may be entered herein against them.

(Signed) O. N. MARRON,
Clerk and Register in Chancery.

TERRITORY OF NEW MEXICO, } *ss:*
County of Bernalillo, }

I hereby certify that I served the within subpœna on the defendant Frank Fagaly by delivering a true copy thereof to him personally on the 26th day of June, A. D. 1894, at the city of Albuquerque.

Dated June 27th, 1894.

(Signed) J. YRISARRI, *Sheriff,*
(Signed) By T. S. HUBBELL,
Deputy Sheriff.

TERRITORY OF NEW MEXICO, } *ss:*
County of Bernalillo, }

28 I hereby certify that I served the within subpœna on the defendant Charles Pilkey by delivering a true copy thereof to him personally on the 10th day of July, 1894.

Dated 10th day of July, 1894.

(Signed) J. YRISARRI, *Sheriff,*
(Signed) By J. FRANK WILL,
Deputy Sheriff.

(Endorsed: No. 3888. In the district court, Territory of New Mexico, county of Bernalillo. Henry Lockhart *vs.* H. C. Leeds *et al.* Subpœna in chancery. Warren, Fergusson and Bruner, attorneys for plaintiff, original. Filed in my office this 14th day of Jul-, 1894. O. N. Marron, clerk.)

And thereafter, on to-wit, the 9th day of October, 1894, there was filed in the office of said clerk, in said cause, a notice by defendants that demurrer will be called for argument at a certain date, which said notice is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the District Court.

HENRY LOCKHART
vs.
H. C. LEEDS ET AL.

In the Matter of the Demurrer to the Bill of Complaint of H. C. Lockhart.

Messrs. Warren and Fergusson:

You are hereby notified that at the incoming of the court on Friday, the 12th day of October, A. D. 1894, we will ask leave of the court to call up for argument, at that time, the demurrer as filed to the said bill of complaint.

(Signed) CHILDERS & DOBSON,
W. C. HEACOCK,
Attorneys for Walker, Leeds, Johnson, and Wills.

29 (Endorsed: No. 3888. Territory of New Mexico, county of Bernalillo, in the district court. Henry Lockhart *vs.* H. C. Leeds *et al.* Childers & Dobson and W. C. Heacock, attorneys for Walker, Leeds, Johnson and Wills. Filed in my office this 9th day of October, 1894. O. N. Marron, clerk.)

And thereafter, on, to-wit, the 4th day of February, 1895, there was an order duly made and entered of record in the said cause, sustaining defendants' demurrer to the bill of complaint, which said order is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO,
County of Bernalillo.

In the District Court.

HENRY LOCKHART
vs.
H. C. LEEDS ET AL.

This cause coming on to be heard upon the demurrer interposed by defendants to the bill of complaint in this cause, and after argument of counsel for respective parties, and the court being fully advised in the premises, doth sustain the said demurrer and dismisses complainant's bill, with leave on the part of said complainant to file an amended bill within twenty days.

(Signed) N. C. COLLIER, *Judge.*

(Endorsed: No. 3888. Henry Lockhart *vs.* H. C. Leeds *et al.* Order sustaining demurrer. Filed in my office this 4th day of Feb., 1895. O. N. Marron, clerk.)

And thereafter, on, to-wit, the 18th day of February 1895, there was filed in the office of the clerk of said court, in the said cause, a petition of complainant to revive cause, etc., which said petition is in words and figures *as* following, to-wit:

In the District Court, Second Judicial District, Bernalillo
30 County, New Mexico, Honorable N. C. Collier, Presiding Judge, etc.

HENRY LOCKHART
vs.
H. C. LEEDS ET AL. } No. 3888. Chancery.

To the Honorable N. C. Collier, judge of said district court:

Henry Lockhart, the complainant in the above entitled cause respectfully states that the defendant Frank Fagaly departed this life in the county of Bernalillo on, to-wit, the 3rd day of February, A. D. 1895, and that the said Frank Fagaly, in his life time, sold, transferred and conveyed all his right, title and interest in and to the said mining property in complainant's bill mentioned and called and known as the Washington lode, being the same mining property in said bill mentioned and described as the Sampson mine, to one Samuel Dunlap, a resident of said county of Bernalillo, and the complainant moves the court for a conditional order that the said action be revived against the said Samuel Dunlap as the successor in interest of the said Frank Fagaly, deceased, as defendant in said cause; and complainant moves the court that the time heretofore allowed him in which to file an amended bill of complaint in said cause be extended until the first day of the next March term of this court, being March 4th, 1895, and including said day.

(Signed) WARREN & FERGUSSON,
Sols. for Complainant.

(Endorsed: No. 3888. Filed in my office this 18th day of Feb., 1895. O. N. Marron, clerk.)

And thereafter, on the 18th day of February, 1895, there was an order of conditional revivor duly made and entered of record
31 in the said cause, which said order is in words and figures following, to-wit:

HENRY LOCKHART
vs.
H. C. LEEDS ET AL. } No. 3888. Chancery.

Upon the reading and filing the petition of Henry Lockhart suggesting the death of the respondent Frank Fagaly, and petitioning that this cause be revived against Samuel Dunlap as the successor in interest of the said Frank Fagaly,

It is ordered, adjudged and decreed by the court that a rule issued on the said Samuel Dunlap that he show cause before the court on

the first day of next March, 1895, term thereof, why this cause should not be revived against him, the said Samuel Dunlap as the successor in interest of the said Frank Fagaly, deceased.

It is further ordered that the time heretofore allowed complainant to file an amended bill of complaint be and it hereby is extended to the 1st day of the next March, 1895, term of the court, and including said day.

(Signed) N. C. COLLIER, *Judge.*

And thereafter, on, to wit, the 4th day of March, 1895, there was filed in the office of the clerk of the said court a certified copy of conditional order of revivor, theretofore issued, together with the sheriff's return thereon, which said order and return, are in words and figures, following, to wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

HENRY LOCKHART }
vs. } No. 3888. Chancery.
H. C. LEEDS ET AL. }

Upon the reading and filing the petition of Henry Lock-
32 hart, suggesting the death of the respondent, Frank Fagaly, and petitioning that this cause be revived against Samuel Dunlap as the successor in interest of the said Frank Fagaly;

It is ordered, adjudged and decreed by the court that a rule issue on the said Samuel Dunlap that he show cause before the court on the first day of the March, 1895, term thereof why this cause should not be revived against him, the said Samuel Dunlap, as the successor in interest of the said Frank Fagaly, deceased.

(Signed) N. C. COLLIER, *Judge.*

TERRITORY OF NEW MEXICO, }
Second Judicial District, County of Bernalillo, } *ss:*

I, O. N. Marron, clerk of said court, do hereby certify that the above and foregoing is a true, correct and complete copy of an original order in the above entitled cause in the matter of the revival of this cause against Samuel Dunlap, made and entered of record on the 18th day of February, 1895, as the same appears of record in my said office.

Witness my hand and the seal of said court this 25th day of February, 1895.

[SEAL.] (Signed) O. N. MARRON, *Clerk.*

(Endorsed:) I, Charles F. Hunt, sheriff of Bernalillo county, New Mexico, certify that I have served this order on the within named Samuel Dunlap, on the 25th day of February, 1895, at said county

of Bernalillo, by then and there delivering a true copy of the same to Samuel Dunlap. (Signed) Charles F. Hunt, sheriff of Bernalillo county. (Signed) By T. S. Hubbell, deputy sheriff.

33 *Fees.*

Service	$1.00
Mileage, (4 miles)	.32
Return	.50
	$1.82

(Endorsed: No. 388–. District court Bernalillo county. Henry Lockhart *vs.* H. C. Leeds, *et al.* Conditional order revivor—original. Filed in my office this 4th day of March, 1895. O. N. Marron, clerk.)

And thereafter, on, to-wit, the 4th day of March, 1895, there was filed in the office of the clerk of the said court in the said cause, an amended bill of complaint and exhibits thereto attached, which said amended bill of complaint is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO, } *ss*:
County of Bernalillo, }

In the District Court of the Second Judicial District of the Territory of New Mexico, Sitting within and for the County of Bernalillo for the Trial of Causes Arising under the Laws of the Territory of New Mexico, in Chancery Sitting.

To the Honorable Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico and judge of the said district court:

Henry Lockhart, a resident of the county of Bernalillo, and Territory of New Mexico by leave of court files this his amended bill of complaint against, and complains of H. C. Leeds, J. A. Johnson, Julia A. Johnson, his wife, Charles Pilkey, Samuel Dunlap, Lee Walker, William B. Childers, Edward Dobson, and Charles Bonsall, receiver, impleaded with said defendants by leave of court first had and obtained, all residents of the said county of Bernalillo,
34 defendants in this cause, and humbly complaining, shows unto your honor, that heretofore, to-wit, on the 7th day of May, 1893, a certain agreement in writing bearing said date was made and entered into by and between your orator and one Benjamin Johnson, by the name and description of Benj. Johnson, with the defendant Charles S. Pilkey, a copy whereof is herewith filed, marked "Exhibit A," and made a part of this your orator's bill of complaint, wherein and whereby said Pilkey contracted and agreed with your orator and the said Benjamin Johnson to enter into a co-partnership with them for the purpose of discovering, locating,

and operating mining claims; and it was thereby contracted and agreed by and between said parties that the said Pilkey should prospect and locate such veins, lodes or placers as he might discover or know the existence of, containing valuable ore or minerals, in the name of and for the joint benefit of all the said parties to said agreement in the proportion of one-third interest to said defendant Pilkey and an undivided two-thirds interest to your orator and the said Benj. Johnson; and your orator and the said Benj. Johnson thereby contracted, in consideration of the premises, to furnish to the said Pilkey at their expense the following articles and tools, viz: twenty-five pounds of giant powder, 100 feet of fuse, one box of caps, one hammer, — pounds of drilled steel and one pick; and when he should have sunk or driven a shaft or tunnel four feet by six feet from the lowest level of the surface at its mouth upon such vein and locality as should be designated by them, he should receive in addition to the above property the sum of thirty dollars, less any money for provisions or other articles, except these
35 above named, which should be furnished to him by them prior to the completion of said work; and it was thereby further contracted and agreed that said work should begin within twenty days from the date of the said agreement and should be prosecuted with due diligence to completion and to the satisfaction of the orator and the said Johnson, and that the said Pilkey should furnish to them from time to time at their request samples of all ores and minerals which should be discovered or taken out of any workings by the said Pilkey; and it was thereby further contracted and agreed that it should be at the option of your orator and the said Benjamin Johnson to continue working or abandon any claim located in pursuance with said agreement, at any time they might deem proper and that the said agreement should continue in force and effect for one year from its date and that all discoveries or locations made during that time by said Pilkey should be included and covered by the said agreement; and it was thereby further contracted and agreed that the said Pilkey should have no power to create any debt or make any contract binding the said other parties to said agreement unless by them authorized in writing so to do; and that any concealment by or on the part of the said defendant Pilkey of any discovery by him made or failure upon his part to locate any valuable mineral claim or claims for the purpose of evading the terms of the said agreement, and defrauding your orator and the said Benjamin Johnson, should work a forfeiture of any right or interest, direct or indirect, that the said Pilkey might have or afterwards obtain, to and for the benefit of your orator and the said Benjamin Johnson.

36 And your orator states that the agreement aforesaid was duly subscribed, executed and delivered by and between the said parties thereto and your orator and the said Benjamin Johnson then and there delivered the said articles and provisions and paid the said money to and for the said Pilkey, and in all respects kept

and performed the terms of the said agreement upon their part, and were at all times thereafter ready and willing and offered so to do.

Your orator further states that, at and prior to the date of said agreement, the said parties thereto had knowledge or information of the existence of valuable mineral deposits in the northeasterly portion of the said county of Bernalillo, in the vicinity of the town called Cochiti, and that it was their purpose in pursuance of said agreement that the said Pilkey should prospect, search for, discover, locate and acquire title to the same for their joint use and benefit in the proportion and upon the terms therein set forth.

And your orator further states that, under and in pursuance of the terms of said agreement, the defendant Pilkey, did thereafter proceed to the aforesaid portion of said county, and did on or prior to the 10th day of July 1993, find and discover a certain valuable mineral bearing lead, lode, ledge, vein or deposit bearing gold and silver, and did then and there enter upon and take actual, full and peaceable possession of the same, for and on behalf of your orator and the said other parties to said agreement as claimants, discoverers and locators of the same under and in pursuance of the terms of the said agreement, and as evidence thereof, the said Pilkey then and there posted in a conspicuous place upon the said lead, lode, ledge, vein or deposit bearing mineral, a notice of the location thereof bearing
37 the said date, a copy whereof is herewith filed, marked "Exhibit B," and made a part of this your orator's bill of complaint, and marked the boundaries of the said claim upon the ground in such manner that the same could be readily traced and thereafter transmitted to your orator and to said Benjamin Johnson at their request samples of ores and minerals by him taken and extracted from the said mineral bearing lode, lead or ledge so by him discovered and taken possession of as before stated, and did thereafter, in pursuance of the direction of your orator and said Johnson commence to sink a shaft, or cut, upon said mineral bearing lode or ledge to the depth of ten feet from the lowest rim thereof, and your orator is informed and believes and so states that he did so sink said shaft or cut thereupon to mineral in place disclosing a large and valuable deposit of gold and silver bearing ore in place within less than ninety days from the time of taking possession of said lode or ledge as aforesaid; and your orator states that they the said discoverers and locators of said mineral bearing lode or ledge, not then knowing whether the said mineral claim was situated upon public domain of the United States and was free and open to location under the mining laws of the United States, performed the required acts of location under said laws and the laws of this Territory, or were ready, able and willing so to do and would have so done except for the wrongful, fraudulent and unlawful acts of the defendants hereinafter mentioned.

Further complaining, your orator shows unto your honor that on or about October 1st, 1893, the defendant Pilkey, while so in possession of the said lead, lode or ledge, under and in pursuance of said

agreement, wrongfully and unlawfully, conspired, combined
38 and confederated with the defendants H. C. Leeds. J. A. Johnson, Frank Fagaly, and Lee Walker to defraud your orator and the said Benjamin Johnson of their interest in and title to the said mine and minerals discovered and possessed by them as aforesaid, and of which the said Pilkey was then in possession under the agreement aforesaid, and that in pursuance of said conspiracy and confederation, on, to-wit, October 1st, 1893, the precise date whereof being unknown to your orator, and agreement was made and entered into by the defendants Fagaly, J. A. Johnson, Walker and Leeds, the defendant Julia Johnson being a party to and having some interest under the said agreement, and the defendant Pilkey, being a party thereto, by which it was agreed that the said Pilkey in violation and fraud of the rights of your orator in and to the said mine of which he was then in possession as aforesaid, by him discovered and held under said agreement, should transfer, convey and deliver possession of said mine to the last named defendant without the knowledge or consent of your orator and the said Johnson, and that they should do and perform all other acts deemed necessary for that purpose; and complainant states that the said complainant by an instrument in writing the precise terms of which are unknown to complainant the same being in possession of defendants or some of them, sold, transferred and conveyed to the defendants Fagley, J. A. Johnson, Leeds and Walker an undivided four-fifths interest in said mine and mineral, the said Pilkey retaining an undivided one-fifth interest therein, which was conveyed to said Walker by said instrument and by him held in trust for said Pilkey and in pursuance of said fraudulent
39 combination and conspiracy, the defendants Frank Fagaly, J. A. Johnson, Lee Walker, and H. C. Leeds, together with the defendant J. Q. Wills, caused and procured the defendant Pilkey to stop work upon the said mines under his said agreement and to fail and neglect to record the said location notice, so by him posted thereon as aforesaid, and the said defendants or some of them wrongfully removed the said location notice from said claim and said defendants covered up or concealed the said workings thereon, heretofore done and performed by defendant Pilkey as aforesaid, and entered into and upon the said lead, lode, ledge and deposit bearing gold and silver, mentioned and described in the location notice heretofore described as the "Sampson" mine, and denied and still deny that your orator had or has any interest therein and thereafter, having so procured possession of the same, the said defendants in pursuance of said confederacy, caused to be posted upon said mine a location notice, and filed the same for record in the recorder's office of said county on, to-wit, December 30th, 1893, and caused the same to be there recorded in Book E, page 576, of mining records and a copy whereof is herewith filed, marked "Exhibit C," and made a part of this bill, and thereby the said defendants claim to have located the said lead, lode or ledge bearing gold and silver and other minerals, so first discovered, located and held by the said

Pilkey, and described in the said location notice by him thereon posted as aforesaid as the "Sampson mine" for the benefit of themselves as locators under the mining laws of the United States and called and designated the same as the "Washington" lode, and it was agreed in pursuance of said confederacy and for the pur-
40 pose of concealing from your orator the interest of said Pilkey in said pretended location that each of the four last named defendants should be entitled to a one-fifth interest in said mine, and the said Pilkey should be entitled to the remaining one-fifth, but that said last named interest should be claimed and held by said Walker in trust for said Pilkey.

Your orator further states that the said Benjamin Johnson has since conveyed to him all his interest in and to the said Sampson location and mine, and your orator has become and now is the owner of the title and interest of the said Benjamin Johnson.

Further complaining your orator states upon his information and belief that the said mine called and known as the "Sampson" mine is situated within the exterior boundaries of a tract of land claimed to have been granted, on August 2nd, A. D. 1728, by the then governor and captain general of New Mexico, under the Crown of Spain, to one Antonio Lucero, and that the same at date of discovery of the said mines by said Pilkey was and now is claimed by certain persons under the said alleged grant, and claims therefore under said grant were at the date of said discovery, and now are pending in the United States Court of Private Land Claims and are undetermined, but your orator is advised by counsel and believes and so states the fact to be that the said alleged grant to the said Antonio Lucero did not effect the donation of sale of the said lode, ledge, or vein bearing gold and silver, so discovered and held by the said Pilkey and called and known as the "Sampson" mine, and that the said Antonio Lucero has not nor have his heirs, representatives or successors had not in any manner nor have they since become entitled in law or in equity to the gold, silver or mineral contained in the said
41 lead, lode or ledge, called and known as the "Sampson" mine; and your orator avers that by virtue of the said prior discovery, possession, working and location of the said mine by said Pilkey acting under the agreement before mentioned, your orator became and now is equitably entitled to the said gold, silver and mineral therein contained and in equity and good conscience has prior and paramount right and title in and to the same.

Your orator further states that the respective defendants, Wills, Childers, Dobson and Dunlap, claim some right or interest in and to the said pretended mining location called and known as the Washington mine derived under or through some of the said other defendants but your orator states that the said Wills and the said Leeds, J. A. Johnson, Julia Johnson and Walker, at and prior to the time of acquiring any interest in said mine, had full notice and knowledge of the rights of your orator and Benjamin Johnson in and to said mineral deposit and of their said agreement with said Pilkey hereinbefore mentioned. Your orator is advised and so

states that the said mineral deposits so discovered by said Pilkey as aforesaid was not and is not subject to location as a mining claim under and in pursuance of the laws of the United States, for the reason that the same is situated as aforesaid within the said alleged private land grant of the said Antonio Lucero, but your orator states that by virtue of the said prior discovery, possession and work of the said lode or mine by the said Pilkey under said agreement he became and was and now is equitably entitled to the said gold silver and minerals, contained in said location called the Sampson mine as against the said defendants or any other person or persons
42 whomsoever, except the Government of the United States and is equitably entitled to the first and preferential right to acquire the legal right thereto from the United States.

Your orator further states that under and by virtue of mesne conveyances your orator has acquired an undivided title and interest as a tenant in common with the other heirs and representatives of said Antonio Lucero in and to the said land included in said alleged grant to said Antonio Lucero, and is lawfully entitled to enter upon and work the said mine.

Your orator further states that theretofore the defendant Charles Bonsall in a certain cause pending in this court wherein the defendant James Q. Wills was and is complainant and the defendants Leeds, J. A. Johnson, and Julia Johnson, Wills, Fagaly, Walker and Pilkey, together with one T. B. Mills and J. T. Dougine were and are defendants, was appointed by this honorable court as receiver of the said alleged Washington lode, under the said pretended location thereof by defendants Leeds, J. A. Johnson, Fagaly, Walker and Pilkey, under the name of the "Washington" mine, and that the said Bonsall in pursuance of said order of appointment has entered upon and taken possession of the said Sampson mine and now holds possession of the same as such receiver.

Your orator further states that after the removal by said defendants of the said location notice posted as aforesaid by said Pilkey of the said "Sampson mine" a copy thereof was procured by your orator, of which "Exhibit C" filed herewith is a copy and the same was recorded in the office of the recorder of said county, on December 9th, 1893, in volume F of mining records of said county, folio 7.

43 Your orator further states that by virtue of the premises he became and was and now is the equitable owner of the said mine and gold and silver ores therein contained so discovered, possessed and located by the said Pilkey under the said agreement, and is equitably entitled as against the said defendants to the possession and enjoyment of the same and to the preferential right to acquire the legal title to the same from the United States, and that the said pretended location thereof under the name of the Washington mine by and in the names of defendants Leeds, J. A. Johnson, Fagaly and Walker, was and is wholly inoperative and void, and that the defendant Charles Pilkey by reason of his participation in the said fraudulent conspiracy, combination and acts with

said other defendants, under and in pursuance of the terms of your orator's said agreement with him, has forfeited all right or interest direct or indirect in and to the said Sampson mine and your orator is equitably the owner of and entitled to the same, and your orator had well hoped that the said defendant- would recognize the prior right and title in and to the same and surrender possession to the same and release all claims thereto to your orator, but now so it is that said defendants excepting defendant Bonsall as receiver, combining and confederating together as aforesaid give out and claim in speeches that the said pretended location and location notice of the said alleged "Washington" lode by the said defendants was and is a valid location as against your orator and that your orator has no title or interest in and to the said mine bearing gold, silver and other minerals, so discovered, possessed and located as the "Sampson mine" by the defendant Pilkey as hereinbefore set forth, and
44 refused to permit your orator to enter upon the said property or to work the same or exercise any acts of possession or ownership thereof, and the defendants respectively claim title to said mining property under and by virtue of said transfer and conveyance from said Pilkey and said pretended location of said Washington lode hereinbefore mentioned.

Your orator therefore prays that the said H. C. Leeds, J. A. Johnson, Julia A. Johnson, his wife, J. Q. Wills, Charles Pilkey, Samuel Dunlap, Lee Walker, William B. Childers, Edward Dobson and Charles Bonsall, receiver as aforesaid, to your orator's amended bill of complaint, be required to full, true and perfect answers make to all and singular the allegations of this bill, but without oath, their respective answers under oath being hereby waived, and that the receiver be appointed to take possession of the lead, lode, ledge or deposit, bearing gold, silver and other metals, situated within the mining claim or location, in the Cochiti mining district, Bernalillo county, New Mexico, called and known as the "Sampson" mine and mentioned and described in the location notice thereof made by Charles Pilkey, Ben. Johnson and Henry Lockhart, dated July 10th, 1893, and recorded in vol. 5 of mining records of said county, folio 7, on December 9th, 1893, to keep and hold possession thereof until the further order of this court, and that the said transfer and conveyance executed by said Pilkey to said Fagaly, Leeds, J. A. Johnson and Walker be decreed fraudulent and void as against your orator and the *said* be cancelled and annulled, and that the location and location notice of the said "Washington" lode by and in the name — Frank Fagaly, Lee Walker, H. C. Leeds,
45 and J. A. Johnson be decreed to be void and of no effect as against your orator, and that the said defendants be enjoined from mining, working or removing from the said "Washington" lode any ore or mineral and your orator be decreed to be the equitable owner of the said ore and mineral contained therein and entitled to the prior and preferential right to acquire the legal title thereto from the United States, by virtue of the said prior discovery

and appropriation thereof by said Pilkey and for such other and further relief as may be equitable and proper in the premises.

And your orator prays as by his original bill of complaint, he has already prayed.

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

Henry Lockhart, being duly sworn says that he is the complainant in the above and foregoing amended bill of complaint, by him subscribed, and has heard read and knows the contents thereof and the matters and things therein contained are true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true.

(Signed) HENRY LOCKHART.

Subscribed and sworn to before me this 2nd day of March, A. D. 1895.

(Signed) FLORENCE S. SCOTT,
Notary Public.
[NOTARIAL SEAL.]

et al. Amended bill of complaint. Filed in my office this 4th day of March, 1895. O. N. Marron, clerk.)

"EXHIBIT A."

Articles of Agreement.

46 For and in consideration of the sum of one dollar to him in hand paid, the receipt of which is hereby acknowledged, Charles Pilkey, party of the first part, agrees with Henry Lockhart and Benjamin Johnson, parties of the second part, all of whom are residents of Bernalillo county, New Mexico, to enter into a partnership for the purpose of discovering, locating and operating mining claims.

The considerations of this agreement are that the said first party shall prospect and locate such veins and lodes and placers as he may discover or know the existence of containing valuable ores or minerals in the name of and for the joint benefit of all the parties hereto; in the proportion of one-third interest to said first party and an undivided two-thirds interest to the second parties.

The said second parties are to furnish the said first party at their expense with the following articles and tools, viz:

Twenty-five pounds of giant powder, 100 feet of fuse, one box of caps, one hammer, — lbs. of drill steel, and one pick, and when he shall — sunk or driven a shaft or tunnel four feet by six feet in a vein of mineral bearing quartz to a depth of twenty feet from the lowest level of the surface at its mouth, such vein and locality to be designated by said second parties, he shall receive in addition the sum of thirty dollars, less any moneys or provisions or other articles except as above enumerated.

Said work to be begun within twenty days from the date of this agreement and prosecuted with due diligence to the completion and to the satisfaction of the said second parties. The said first party to furnish the second parties from time to time at their request samples of all ores and minerals discovered or taken out of any workings.

47 It shall be at the option of the said second parties to continue working or abandon any claim located at any time they deem proper. This agreement to continue in force and effect for one year from its date, all discoveries or locations made during that time by said party to be covered by this agreement. The said first party has no power to create any debt or make any contract binding the second parties to this agreement unless authorized to do so in writing by the said second parties. Any concealment of a discovery or failure to locate of a valuable mineral claim or claims for the purpose of evading the terms of this agreement and defrauding the said second parties shall work a forfeiture of any right or interest, direct or indirect, that such first party might have or afterwards obtain to and for the benefit of the said second parties.

Dated May 7th, 1893.

(Signed) CHARLES PILKEY. [SEAL.]
" HENRY LOCKHART. [SEAL.]
" BENJ. JOHNSON. [SEAL.]

Witness:
W. C. HEACOCK.

(Endorsed on back: "Article of agreement—Charles Pilkey and Lockhart and Johnson." Also seal and certificate of recordation, signed by J. W. Harris, recorder, that same was filed for record on the 7th day of December, 1893, at 11 o'clock a. m. in vol. E. of mining records of Bernalillo county, page 562.)

"EXHIBIT B."

The undersigned, —— ——, citizens of the United States, over the age of 21 years, having complied with all the re-
48 quirements of the United States and territorial laws now in force relative to mineral locations, and with all local customs, and regulations in force relative to such locations, have located and do hereby claim by right of discovery and location fifteen hundred (1500) linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with three hundred (300) feet of surface ground along and on each side of said 1500 feet. The claim hereby located is situate in the Cochiti dis. mining district, county of Bernalillo, Territory of New Mexico, and is more particularly described as follows:

Beginning at the monument of stones (monument No. 1) erected on said lode, lead and deposit, said monument No. 1 being the north end monument of this claim, and being the center of the

north end line of said claim; thence west 300 feet to a monument of stones (No. 2); thence south 1500 feet to a monument of stones (No. 3); thence east 300 feet to a monument of stones (No. 4), said monument No. 4 being the south end monument and the center of the south end line of this claim; thence east 300 feet to a monument of stones (No. 5); thence north 1500 feet to a monument of stones (No. 6); thence west 300 feet to the place of beginning.

And for further description the lode is of grayish quartz from three to five feet wide, and can be traced for (1000) yards, dips into the mountain.

This claim was located July 10th, A. D. 1893, and shall be known as the "Sampson mine." A copy of this notice is placed on monument No. — in the center of claim by a pine tree with bark off on south side.

CHARLES PILKEY,
BEN. JOHNSON,
HENRY LOCKHART,
Locators.

49

Notice posted on claim in presence of—
IDA PILKEY,
LEE DUDLEY,
Witnesses.

(Endorsed: Name of claim, "Sampson mine." Names of locators, Charles Pilkey, Ben. Johnson, Henry Lockhart. Territory of New Mexico, county of Bernalillo, *ss:* I hereby certify that this instrument was filed for record on the 9th day of December, A. D. 1893, at 11 o'clock a. m., and recorded December 19th, A. D. 1893. J. W. Harris, recorder.)

"EXHIBIT C."

Notice of Location.

The undersigned, citizens of the United States, over the age of twenty-one years, having complied with all the requirements of the United States and territorial laws now in force relative to mineral locations, and with all local customs and regulations in force relative to such locations, have located, and do hereby claim by right of discovery and location 1500 linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with 300 feet of surface ground along and on each side of said 1500 feet.

The claim hereby located is situated in the Cochiti mining district, county of Bernalillo, New Mexico, and more particularly described as follows:

Beginning at a post No. 1 erected on said lode, lead and deposit, said post being the north end center monument of this claim, and being the center of the north line of said claim marked
50 ("north end center post"); thence east 300 feet to the northeast corner post No. 2, marked "northeast corner post;" thence south

1500 feet to post No. 3, southeast corner post, "marked "southeast corner post;" thence east 300 feet to post No. 4, marked "south end center post;" thence 300 feet to post No. 5, marked "southwest corner post;" thence north 1500 feet to post No. 6, marked "northwest corner post;" thence east 300 feet to the place of beginning. All of said marks being in pencil, and the discovery shaft of said claim being located within the exterior lines thereof and on the lode or lead located and upon which said discovery shaft is posted a copy of this notice of location, and in the monument of stones around all of said post referred to are piles of stones.

Said claim being about two miles north of Peralta mountain, Cochiti mining district, Bernalillo county, New Mexico.

This claim is located in the said mining district, about 60 feet from the north end center where location line paper is nailed to pine tree about 60 feet south of north end center line. Direction from a big pine tree marked with a blaze.

This location is an amended location of said claim, the original thereof having been made on the 20th day of October, A. D. 1893. Said claim shall be known as the "Sunny South lode." Located by F. Fagaly, J. A. Johnson, H. C. Leeds, Lee Walker, locators.

Filed for record December 30th, 1893, at 10 a. m., and recorded January 15th, 1894.

"EXHIBIT C."

The undersigned, —— —— citizens of the United States
51 and over the age of twenty-one years, having complied with all requirements of the United States and territorial laws now in force relative to mineral locations, and with all local customs and regulations in force relative to such locations, ha- located, and do hereby claim the right of discovery and location, fifteen hundred (1500) linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with three rundred feet of surface ground along and on each side of said 1500 feet. The claim hereby located is situate in the Cochiti mining district, county of Bernalillo, Territory of New Mexico, and is more particularly described as follows:

Beginning at a monument of stones (monument No. 1), erected on said lode, lead and deposit; said monument No. 1 being the north end monument of this claim and being the center of the north end line of said claim; thence west 300 feet to a monument of stones (No. 2); thence south 1500 feet to a monument of stones (No. 3); thence east 300 feet to a monument of stones (No. 4), said monument No. 4 being the south end monument and the center of the south end line of this claim; thence 300 feet to a monument of stones (No. 5); thence north 1500 feet to a monument of stones (No. 6); thence west 300 feet to the place of beginning.

And for further description the lode is of grayish quartz, from three to five feet wide, and can be traced for 1000 yards. Dips into the mountain.

This claim was located July 10th, A. D. 1893, and shall be known as the Sampson mine. A copy of this notice is placed on monument No. — in the center of the claim by a pine tree with bark off on the south side.

CHAS. PILKEY,
BEN JOHNSON,
HENRY LOCKHART,
Locators.

52

Notice posted on the claim in presence of

ADA PILKEY,
LEE DUDLEY,
Witnesses.

(Endorsed on back: Notice of mining location. Name of claim, "Sampson." Name of locators, Charles Pilkey, Ben Johnson, Henry Lockhart. Filed for record this — day of ——, A. D. 189–. —— ——, recorder. Territory of New Mexico, county of Bernalillo. This instrument was filed for record on the 9th day of December, 1893, at 11 o'clock a. m. Recorded in volume F of mining records of said county, folio 7. J. W. Harris, recorder.)

And thereafter, on, to-wit, the 14th day of March, 1895, there was filed in the office of the clerk of said court, in said cause, complainant's consent for extension of time to answer, etc., which said consent is in words and figures following, to-wit:

COUNTY OF BERNALILLO, *ss:*

In the District Court.

HENRY LOCKHART
vs.
H. C. LEEDS ET AL.

Complainant in the above entitled cause, by Warren & Fergusson, his solicitors, hereby consents that the defendants may have until March 18th, within which to answer, the demurrer or plead to the amended bill of complaint filed in the above cause.

(Signed) WARREN & FERGUSSON,
Solicitors for Complainant.

(Endorsed: 3888. Henry Lockhart *vs.* H. C. Leeds *et al.* Filed in my office this 14th day of March, 1895. O. N. Marron, clerk.)

And thereafter, on, to-wit, the 16th day of March, 1895,
53 there was filed in the office of the said clerk of the said court defendants' demurrer to amended bill of complaint, which said demurrer is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

In the District Court, Second Judicial District.

HENRY LOCKHART, Complainant,
vs.
H. C. LEEDS, J. A. JOHNSON, JULIA A. JOHNSON, J. Q. WILLS, Charles Pilkey, Samuel Dunlap, Lee Walker, Chas. Bonsall, E. W. Dobson, and W. B. Childers, Defendants.

And now come the above named defendants, H. C. Leeds, J. A. Johnson, Julia A. Johnson, and J. Q. Wills, and Chas. Bonsall, by their solicitors, Childers W. B., and E. W. Dobson, and the defendants Chas. Pilkey and Lee Walker, by their solicitor, W. C. Heacock, and defendants W. B. Childers and E. W. Dobson, in their own proper persons, by protestation, not confessing or acknowledging any of the matters and things in said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth, and alleged; and demur to said amended bill and for cause of demurrer allege the following:

1. Because the bill does not allege that the defendants, Dunlap, Johnson, Leeds and Walker entered in and upon said mining claim at any time prior to the 10th day of October, 1893, that is to say, within three months after said mine is alleged to have been located under the name of Sampson.

2. Because it appears from the allegations in complainant's amended bill that no valid location notice was ever posted upon the surface of said claim, or recorded in the recorder's office of the proper county, as required by law.

54 3. Because it does not appear from said amended bill that complainant and his co-locators ever did the work required by law to be done within three months after taking possession of said claim, or otherwise complied with the requirements of the law, as to perfecting mining locations.

4. Because the agreement alleged to have been made between complainant and said Johnson with one Pilkey was subject to revocation by either party thereto at any time and the facts alleged in the amended bill amounted to an abandonment of said alleged Sampson claim under the terms of said alleged agreement.

5. Because it does not appear from said amended bill when the complainant acquired an undivided interest in said alleged grant with the heirs of Antonio Lucero, deceased, or what the nature, extent and amount of said interest is, or through what mean conveyance it was acquired.

6. Because it does not appear that at the time the alleged entry by defendants Dunlap, Walker, Leeds and Johnson was made on said mining claim, that the complainant or his co-locators under the alleged Sampson location were in possession of the said mining claim, or any part thereof or had any lawful right to the possession thereof.

7. Because it does not appear from the allegations in said amended bill that the defendants are not co-tenants with the heirs of Antonio Lucero, deceased, and have a larger interest and a better right to the possession of the surface ground of said claim than the complainant.

55 8. Because ownership in said alleged grant confers no interest in the mineral thereon, or the right to mine the same.

9. Because the complainant's remedy is at law and the amended bill does not state a case for a court of equity.

Wherefore these defendants demur to said amended bill and to all the matters and things contained therein and pray the judgment of this honorable court, whether they shall be compelled to make any further or other answer thereto; and pray to be dismissed with their reasonable costs in this behalf sustained.

W. B. Childers, of lawful age, counsel for defendants, certifies that the foregoing demurrer is, in his opinion, well founded in point of law.

(Signed) W. B. CHILDERS.

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

W. B. Childers, being duly sworn, upon oath deposes and says that he is a counsel for the defendants for whom the foregoing demurrer is filed, and that said demurrer is not interposed for delay.

(Signed) W. B. CHILDERS.

Subscribed and sworn to before me this 16th day of March, A. D. 1895.

(Signed) E. W. DOBSON,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed on back: No. 3888. District court. Henry Lockhart vs. H. C. Leeds *et al.* Demurrer to amended bill of complaint. Filed in my office this 16th day of March, 1895. O. N. Marron, clerk.)

And thereafter, on, to-wit, January 6th, 1896, there was filed in the office of the clerk of the said court, in the said cause, an amended second bill of complaint and exhibits attached thereto, which

56 said second amended bill of complaint is in words and figures following, to-wit:

In the District Court of the Second Judicial District, Sitting within and for the County of Bernalillo and Territory of New Mexico. Chancery.

To the Honorable Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico and judge of the said district court:

Henry Lockhart, a resident of the county of Bernalillo, and Territory of New Mexico, by leave of the court, files this his amended (second) bill of complaint against, and complains of H. C. Leeds, J. A. Johnson, Julia A. Johnson, his wife, J. Q. Wills, Charles Pilkey, Samuel Dunlap, successor in interest of Frank Fagaly, deceased, the heirs and legal representatives of Lee Walker, deceased, William B. Childers and E. W. Dobson, and Charles Bonsall, receiver, impleaded with said defendants by leave of court first had and obtained, all residents of the said county of Bernalillo, defendants in this cause, and humbly complaining, shows unto your honor, that heretofore, to-wit, on the 7th day of May, 1893, a certain agreement in writing bearing said date was made and entered into by and between your orator and one Benjamin Johnson, by the name and description of Benj. Johnson, with the defendant Charles S. Pilkey, a copy whereof is herewith filed, marked "Exhibit A," and made a part of this your orator's bill of complaint, wherein and whereby said Pilkey contracted and agreed with your orator and the said Benjamin Johnson to enter into a co-partnership with them for the purpose of discovering, locating, and operating mining claims; and it was thereby contracted and agreed by and between
57 said parties that the said Pilkey should prospect and locate such veins, lodes or placers as he might discover or know the existence of, containing valuable ore or minerals, in the name of and for the joint benefit of all the said parties to said agreement in the proportion of one-third interest to said defendant Pilkey and an undivided two-thirds interest to your orator and the said Benj. Johnson; and your orator and the said Benj. Johnson thereby contracted, in consideration of the premises, to furnish to the said Pilkey at their expense the following articles and tools, viz: Twenty-five pounds of giant powder, 100 feet of fuse, one box of caps, one hammer, — pounds of drilled steel and one pick; and when he should have sunk or driven a shaft or tunnel four feet by six feet from the lowest level of the surface at its mouth upon such vein and locality as should be designated by them, he should receive in addition to the above property the sum of thirty dollars, less any money for provisions or other articles, except these above named, which should be furnished to him by them prior to the completion of said work; and it was thereby further contracted and agreed that said work should begin within twenty days from the date of the said agreement and should be prosecuted with due diligence to completion and to the satisfaction of the orator and the said Johnson, and that the said Pilkey should furnish to them from time to time at their request samples of all ores and minerals which should be dis-

covered or be taken out of workings by the said Pilkey; and it was thereby further contracted and agreed that it should be at the option of your orator and the said Benjamin Johnson to continue working or abandon any claim located in pursuance with said agreement, at any time they might
58 deem proper and that the said agreement should continue in force and effect for one year from its date and that all discoveries or locations made during that time by said Pilkey should be included and covered by the said agreement; and it was thereby further contracted and agreed that the said Pilkey should have no power to create any debt or make any contract binding the said other parties to said agreement unless by them authorized so to do; and that any concealment by or on the part of the said defendant Pilkey of any discovery by him made or failure upon his part to locate any valuable mining claim or claims for the purpose of evading the terms of the said agreement, and defrauding your orator and the said Benjamin Johnson, should work a forfeiture of any right or interest, direct or indirect, that the said Pilkey might have or afterwards obtain, to and for the benefit of your orator and the said Benjamin Johnson.

And your orator further states that the agreement aforesaid was duly subscribed, executed and delivered by and between the said parties thereto and your orator and the said Benjamin Johnson then and there delivered the said articles and provisions and paid the said money and divers other sums of money to and for the said Pilkey, and in all respects kept and performed the terms of the said agreement upon their part, and were at all times thereafter ready and willing and offered so to do.

Your orator further states that, at and prior to the date of said agreement, the said parties thereto had knowledge or information of the existence of valuable mineral deposits in the northeasterly portion of the said county of Bernalillo, in the vicinity of the town called Cochiti, and that it was their purpose in pursuance of
59 said agreement that the said Pilkey should prospect, search for, discover, locate and acquire title to the same for their joint use and benefit in the proportion and upon the terms therein set forth.

And your orator further states that, under and in pursuance of the terms of said agreement, the defendant Pilkey, did thereafter proceed to the aforesaid portion of said county, and did on or prior to the 10th day of July, 1993, find and discover a certain valuable mineral bearing lead, lode, ledge, vein or deposit bearing gold and silver, and did then and there enter upon and take actual, full and peaceable possession of fifteen hundred (1500) linear feet of, on and along the said mineral bearing lead, vein, or deposit, and also of three hundred (300) feet of surface ground along and on each side of said fifteen hundred (1500) feet, which was necessary and convenient for the mining and working of said mineral deposits which are respectively more particularly identified and described in the notice hereinafter mentioned; and posted thereon by said Pilkey,

and which is referred to and made a part of this bill for a more particular description, for and on behalf of your orator and the said other parties to said agreement as claimants, discoverers and locators of the same under and in pursuance of the terms of the said agreement, and as evidence of said discovery claim and possession said Pilkey then and there posted in a conspicuous place upon the said lead, lode, ledge, vein or deposit bearing mineral, a notice of the location and possession thereof bearing the said date, a copy whereof is herewith filed, marked "Exhibit B," and made a part of this your orator's bill of complaint, and marked the boundaries of the
60 said claim upon the ground in such manner that the same could be readily traced and thereafter transmitted to your orator and to said Benjamin Johnson at their request samples of ores and minerals by him taken and extracted from the said mineral bearing lode, lead or ledge so by him discovered and taken possession of as before stated, and did thereafter, in pursuance of the direction of your orator and said Johnson commence to sink a shaft, or cut, upon said mineral bearing lode or ledge to the depth of ten feet from the lowest rim thereof, and your orator is informed and believes and so states that he did so sink said shaft or cut thereupon to mineral in place disclosing a large and valuable deposit of gold and silver bearing ore in place within less than ninety days from the time of taking possession of said lode or ledge as aforesaid; and your orator states that they the said discoverers and locators and claimants of said mineral bearing lode or ledge, not then knowing whether the said mineral claim was situated upon public domain of the United States and was free and open to location under the mining laws of the United States, performed the required acts of location under said laws and the laws of this Territory, and were ready, able and willin- in all things to comply therewith, and would have so done except for the wrongful, fraudulent and unlawful acts of the defendants hereinafter mentioned.

Further complaining, your orator shows unto your honor that on or about October 1st, 1893, the defendant Pilkey, while so in possession of the said lead, lode or ledge, under and in pursuance of said agreement, wrongfully and fraudulently conspired, combined and confederated with the defendants H. C. Leeds,
61 J. A. Johnson, Frank Fagaly, and Lee Walker to defraud your orator and the said Benjamin Johnson of their interest in and title to the said mine and minerals discovered and possessed by them as aforesaid, and of which the said Pilkey, as the partner of and co-owner with your orator, was then in pursuance of said conspiracy and confederation, on, to-wit, October 1st, 1893, the precise date whereof being unknown to your orator, and agreement was made and entered into by the defendants Fagaly, J. A. Johnson, Walker and Leeds, the defendant Julia Johnson being a party to and having some interest under the said agreement, and the defendant Pilkey being a party thereto, by which it was agreed that the said Pilkey in violation and fraud of the rights of your orator in and to the said mine of which he was then in possession as afore-

said, by him discovered and held under said agreement, should transfer, convey and deliver possession of said mine to the last named defendant without the knowledge or consent of your orator and the said Johnson, and that they should do and perform all other acts deemed necessary for that purpose; and complainant states that the said complainant by an instrument in writing the precise terms of which are unknown to complainant the same being in possession of defendants or some of them, sold, transferred and conveyed to the defendants Fagley, J. A. Johnson, Leeds and Walker an undivided four-fifths interest in said mine and mineral, the said Pilkey retaining an undivided one-fifth interest therein, which was conveyed to said Walker by said instrument and by him held in secret trust for said Pilkey and in pursuance of said fraudulent combination and conspiracy, the defendants Frank Fagaly, J. A. Johnson, Lee Walker, and H. C. Leeds,
62 together with the defendant J. Q. Wills, caused and procured the defendant Pilkey to stop work upon the said mines under his said agreement and to fail and neglect to record the said location notice, so by him posted thereon as aforesaid, and the said defendants or some of them wrongfully removed the said location notion from said claim and said defendants covered up or concealed the said workings thereon, heretofore done and performed by defendant Pilkey as aforesaid, and by collusion with the said Pilkey, and without the knowledge or consent of your orator and the said Johnson entered into and upon the said lead, lode, ledge and deposit bearing gold and silver, and upon the said parcel or surface ground, including the same mentioned and described in said location notice, and known as the "Sampson mine," and denied and still deny that your orator had or has any interest therein and thereafter, having so procured possession of the same, the said defendants in pursuance of said confederacy, caused to be posted upon said mine a location notice, and filed the same for record in the recorder's office of said county on, to-wit, December 13th, 1893, and caused the same to be there recorded in Book E, page 576, of mining records and a copy whereof is herewith filed, marked "Exhibit C," and made a part of this bill, and thereby the said defendants claim to have located the said lead, lode or ledge bearing gold and silver and other minerals, so first discovered, located and held by the said Pilkey, for the benefit of himself, your orator and the said Benjamin Johnson, and described by him in the said location notice by him thereon posted as aforesaid as the "Sampson mine" for the benefit of themselves as
63 locators under the mining laws of the United States and called and designated the same as the "Washington" lode, and it was agreed in pursuance of said confederacy and for the purpose of concealing from your orator the interest of said Pilkey in said pretended location that each of the four last named defendants should be entitled to a one-fifth interest in said mine, and the said Pilkey should be entitled to the remaining one-fifth, but that said last named interest should be claimed and held by said Walker in trust for said Pilkey.

Your orator further states that the said Benjamin Johnson has conveyed to him all his interest in and to the said Sampson location and mine, and your orator has become and now is the owner of the title and interest of the said Benjamin Johnson.

Further complaining your orator states upon his information and belief that the said mine called and known as the "Sampson" mine is situated within the exterior boundaries of a tract of land claimed to have been granted, on August 2nd, A. D. 1728, by the then governor and captain general of New Mexico, under the Crown of Spain, to one Antonio Lucero, and that the same at date of discovery of the said mines by said Pilkey was and now is claimed by certain persons under the said alleged grant, and claims therefore under said grant were at the date of said discovery, and now are pending in the United States Court of Private Land Claims and are undetermined, but your orator is advised by counsel and believes and so states the fact to be that the said alleged grant to the said Antonio Lucero did not effect the donation of sale of the said lode, ledge, or vein bearing gold and silver, so discovered and held by the said Pilkey and called and known as the "Sampson" mine, and
64 that the said Antonio Lucero has not nor have his heirs, representatives or successors, since become entitled in law or in equity to the gold, silver or minerals contained in the said lead, lode or ledge, called and known as the "Sampson" mine; and your orator avers that by virtue of the said prior discovery, possession, working and location of the said mine by said Pilkey, acting under the agreement before mentioned, your orator became and now is equitably entitled to the said gold, silver and minerals therein contained and in equity and in good conscience has a prior and paramount right and title in and to the same, as against the said defendants or any or either of them.

Your orator further states that the respective defendants, Wills, Childers, Dobson and Dunlap, claim some right or interest in and to the said pretended mining location called and known as the Washington mine derived under or through some of the said other defendants but your orator states that the said Wills and the said Leeds, J. A. Johnson, Julia Johnson, Fagaly and Walker, and each of the defendants *d*erein, at and prior to the time of acquiring any interest in said mine, had full notice and knowledge of the rights of your orator and Benjamin Johnson in and to said mineral deposit and of their said agreement with said Pilkey hereinbefore mentioned. Your orator is advised and so states that the said mineral deposit*s* so discovered by said Pilkey as aforesaid was not and is not subject to location as a mining claim under and in pursuance of the laws of the United States, for the reason that the same is situated as aforesaid within *hte* said alleged private land grant to said Antonio Lucero, but your orator states that by virtue of the said prior
65 discovery, possession and work of the said lode or mine by the said Pilkey under said agreement he became and was and now is equitably entitled to the said gold silver and minerals, contained in said location called the Sampson mine as against the said

defendants or any other person or persons whomsoever, except the Government of the United States and is equitably entitled to the first and preferential right to acquire the legal right thereto from the United States.

Your orator further states that under and by virtue of mesne *and* conveyances your orator has acquired an undivided title and interest as a tenant in common with the other heirs and representatives of said Antonio Lucero, prior and superior to any title or right thereto on the part of the defendants or either of them, and is lawfully entitled to enter upon and work the said mine.

Your orator further states that heretofore the defendant Charles Bonsall in a certain cause pending in this court wherein the defendant James Q. Wills was and is complainant and the defendants Leeds, J. A. Johnson, and Julia Johnson, Wills, Fagaly, Walker and Pilkey, together with one T. B. Mills and J. T. Dougine were and are defendants, was appointed by this honorable court as receiver of the said alleged Washington lode, under the said pretended location thereof by defendants Leeds, J. A. Johnson, Fagaly, Walker and Pilkey, under the name of the "Washington" mine, and that the said Bonsall in pursuance of said order of appointment has entered upon and taken possession of the said Sampson mine and now holds possession of the same as such receiver.

66 Your orator further states that after the removal by said defendants of the said location notice posted as aforesaid by said Pilkey of the said "Sampson mine" a copy thereof was procured by your orator, of which "Exhibit C" filed herewith is a copy and the same was recorded in the office of the recorder of said county, on December 9th, 1893, in volume F of mining records of aid county, folio 7.

Your orator further states that by virtue of the premises he became and was and now is the equitable owner of the said *now is the equitable owner of the said* mineral bearing vein, lead, lode and deposit hereinbefore described, and of gold and silver ores therein contained so discovered, possessed and located by the said Pilkey under the said agreement, and is equitably entitled as against the said defendants to the possession and enjoyment of the same and to the preferential right to acquire the legal title to the same from the United States, and that the said pretended location thereof under the name of the Washington mine by and in the names of defendants Leeds, Johnson, Fagaly and Walker, was and is wholly inoperative and void, and that the defendant Charles Pilkey by reason of his participation in the said fraudulent conspiracy, combination and acts with said defendants under and in pursuance of your orator's said agreement with him, has forfeited all right or interest direct or indirect in and to the said Sampson mine and your orator is equitably the owner of and entitled to the same, and your orator had well hoped that the said defendant would recognize the prior right and title in and to the same and surrender possession to the same and release all claims thereto to your orator, but now so it is that said defendants excepting defendant

Bonsall as receiver, combining and confederating together
67 as aforesaid give out and claim in speeches that the said pretended location and location notice of the said alleged "Washington" lode by the said defendants was and is a valid location as against your orator and that your orator has no title or interest in and to the said mine bearing gold, silver and other minerals, so discovered, possessed and located as the "Sampson mine" by the defendant Pilkey as hereinbefore set forth, and refused to permit your orator to enter upon the said property or to work the same or exercise any acts of possession or ownership thereof, and the defendants respectively claim title to said mining property under and by virtue of said transfer and conveyance from said Pilkey and said pretended location of said Washington lode hereinbefore mentioned.

And your orator shows unto your honor that the hereinbefore described mineral bearing lead, lode, vein or deposit, is only valuable for the ores and minerals contained therein, and that said defendants have been ever since they took possession thereof and are now engaged in mining, extracting and converting to their own use the said ores and minerals, and have mined and removed ores and mineral of great value therefrom and threaten and intend to continue so to do, and will unless enjoined therefrom mine, extract and remove all the said ores and minerals, and thereby the entire substance and value of said property will be destroyed, and your orator will sustain irreparable injury.

And your orator states upon his information and belief that some of the said defendants are wholly insolvent and recovery of damages against them in an action at law will be wholly useless and un-
68 availing. Your orator therefore prays that the said H. C. Leeds, J. A. Johnson, Julia A. Johnson, his wife, J. Q. Wills, Charles Pilkey, Samuel Dunlap, the heirs and legal representatives of the said Lee Walker, deceased, William B. Childers, Edward Dobson and Charles Bonsall, receiver as aforesaid, be required to full, true and perfect answers make to all and singular the allegations of this your orator's second amended bill of complaint, but without oath, their respective answers under oath being hereby waived, and that the receiver be appointed to take possession of the lead, ledge or deposit, bearing gold, silver and other metals, situated within the mining claim or location, in the Cochiti mining district, Bernalillo county, New Mexico, called and known as the "Sampson" mine and mentioned and described in the location notice thereof made by Charles Pilkey, Ben. Johnson and Henry Lockhart, dated July 10th, 1893, and recorded in vol. 5 of mining records of said county, folio 7, on December 9th, 1893, to keep and hold possession thereof until the further order of this court, and that the said transfer and conveyance executed by said Pilkey to said Fagaly, Leeds, J. A. Johnson and Walker be decreed fraudulent and void as against your orator, and the *said* be cancelled and annulled, and that the location and location notice of the said "Washington" lode by and in the name— Frank Fagaly, Lee Walker, H. C. Leeds and J. A. Johnson be decreed to be void and of no effect as against your orator, and that the

said defendants be enjoined from mining, working or removing from the said "Washington" lode any ore or mineral and your orator be decreed to be the equitable owner of the said ore and mineral
69 contained therein and entitled to the prior and preferential right to acquire the legal title thereto from the United States, by virtue of the said prior discovery and appropriation thereof by said Pilkey and for such other and further relief as may be equitable and proper in the premises.

And your orator prays as by his original bill of complaint, he has already prayed.

(Signed) WARREN, FERGUSSON & GILLETT,
Sol's for Complainant.

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

Henry Lockhart, being duly sworn says that he is the complainant in the above and foregoing amended bill of complaint, by him subscribed, and has heard read and knows the contents thereof and the matters and things therein contained are true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true.

(Signed) HENRY LOCKHART.

Subscribed and sworn to before me this 6th day of January, A. D. 1896.

(Signed) S. B. GILLETT,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsement: 3888. Henry Lockhart *vs.* J. Q. Wills *et al.* Second amended bill. In the second judicial district court, Bernalillo county, New Mexico. Filed in my office this 6th day of January, 1896. O. N. Marron, clerk.)

"EXHIBIT A."

Articles of Agreement.

For and in consideration of the sum of one dollar to him in
70 hand paid, the receipt of which is hereby acknowledged, Charles Pilkey, party of the first part, agrees with Henry Lockhart and Benjamin Johnson, parties of the second part, all of whom are residents of Bernalillo county, New Mexico, to enter into a partnership for the purpose of discovering, locating and operating mining claims.

The considerations of this agreement are that the said first party shall prospect and locate such veins and lodes and placers as he may discover or know the existence of containing valuable ores or minerals in the name of and for the joint benefit of all the parties hereto; in the proportion of one-third interest to said first party and an undivided two-thirds interest to the second parties.

The said second parties are to furnish the said first party at their expense with the following articles and tools, viz:

Twenty-five pounds of giant powder, 100 feet of fuse, one box of caps, one hammer, — lbs. of drill steel, and one pick, and when he shall — sunk or driven a shaft or tunnel four feet by six feet in a vein of mineral bearing quartz to a depth of twenty feet from the lowest level of the surface at its mouth, such vein and locality to be designated by said second parties, he shall receive in addition the sum of thirty dollars, less any moneys or provisions or other articles except as above enumerated.

Said work to be begun within twenty days from the date of this agreement and prosecuted with due diligence to the completion and to the satisfaction of the said second parties. The said first party to furnish the second parties from time to time at their request samples of all ores and minerals discovered or taken out of any workings.

71 It shall be at the option of the said second parties to continue working or abandon any claim located at any time they deem proper. This agreement to continue in force and effect for one year from its date, all discoveries or locations made during that time by said party to be covered by this agreement. The said first party has no power to create any debt or make any contract binding the second parties to this agreement unless authorized to do so in writing by the said second parties. Any concealment of a discovery or failure to locate of a valuable mineral claim or claims for the purpose of evading the terms of this agreement and defrauding the said second parties shall work a forfeiture of any right or interest, direct or indirect, that such first party might have or afterwards obtain to and for the benefit of the said second parties.

Dated May 7th, 1893.

(Signed) CHARLES PILKEY. [SEAL.]
" HENRY LOCKHART. [SEAL.]
" BENJ. JOHNSON. [SEAL.]

Witness:
W. C. HEACOCK.

(Endorsed on back: "Article of agreement—Charles Pilkey and Lockhart and Johnson." Also seal and certificate of recordation, signed by J. W. Harris, recorder, that same was filed for record on the 7th day of December, 1893, at 11 o'clock a. m. in vol. E of mining records of Bernalillo county, page 562.)

"EXHIBIT B."

The undersigned, —— ——, citizens of the United States, over the age of 21 years, having complied with all the requirements of the United States and territorial laws now in force relative to mineral locations, and with all local customs, and regulations in

72 force relative to such locations, have located and do hereby claim by right of discovery and location fifteen hundred

(1500) linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with three hundred (300) feet of surface ground along and on each side of said 1500 feet. The claim hereby located is situate in the Cochiti dis. mining district, county of Bernalillo, Territory of New Mexico, and is more particularly described as follows:

Beginning at the monument of stones (monument No. 1) erected on said lode, lead and deposit, said monument No. 1 being the north end monument of this claim, and being the center of the north end line of said claim; thence west 300 feet to a monument of stones (No. 2); thence south 1500 feet to a monument of stones (No. 3); thence east 300 feet to a monument of stones (No. 4), said monument No. 4 being the south end monument and the center of the south end line of this claim; thence east 300 feet to a monument of stones (No. 5); thence north 1500 feet to a monument of stones (No. 6); thence west 300 feet to the place of beginning.

And for further description the lode is of grayish quartz from three to five feet wide, and can be traced for (1000) yards, dips into the mountain.

This claim was located July 10th, A. D. 1893, and shall be known as the "Sampson mine." A copy of this notice is placed on monument No. — in the center of claim by a pine tree with bark off on south side.

CHARLES PILKEY,
BEN. JOHNSON,
HENRY LOCKHART,
Locators.

73 Notice posted on claim in presence of
IDA PILKEY,
LEE DUDLEY,
Witnesses.

(Endorsed: Name of claim, "Sampson mine." Names of locators, Charles Pilkey, Ben. Johnson, Henry Lockhart. Territory of New Mexico, county of Bernalillo, *ss.* I hereby certify that this instrument was filed for record on the 9th day of December, A. D. 1893, at 11 o'clock a. m., and recorded December 19th, A. D. 1893. J. W. Harris, recorder.)

"EXHIBIT C."

Notice of Location.

The undersigned, citizens of the United States, over the age of twenty-one years, having complied with all the requirements of the United States and territorial laws now in force relative to mineral locations, and with all local customs and regulations in force relative to such locations, have located, and do hereby claim by right of discovery and location 1500 linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with 300 feet of surface ground along and on each side of said 1500 feet.

The claim hereby located is situated in the Cochiti mining district, county of Bernalillo, New Mexico, and more particularly described as follows:

Beginning at a post No. 1 erected on said lode, lead and deposit, said post being the north end center monument of this claim, and being the center of the north line of said claim marked ("north end center post"); thence east 300 feet to the northeast corner
74 post No. 2, marked "northeast corner post;" thence south 1500 feet to post No. 3, southeast corner post, marked "southeast corner post;" thence east 300 feet to post No. 4, marked "south end center post;" thence 300 feet to post No. 5, marked "southwest corner post;" thence north 1500 feet to post No. 6, marked "northwest corner post;" thence east 300 feet to the place of beginning. All of said marks being in pencil, and the discovery shaft of said claim being located within the exterior lines thereof and on the lode or lead located and upon which said discovery shaft is posted a copy of this notice of location, and in the monument of stones around all of said post- referred to are piles of stones.

Said claim being about two miles north of Peralta mountain, Cochiti mining district, Bernalillo county, New Mexico.

This claim is located in the said mining district, about 60 feet from the north end center where location line paper is nailed to pine tree about 60 feet south of north end center line. Direction from a big pine tree marked with a blaze.

This location is an amended location of said claim, the original thereof having been made on the 20th day of October, A. D. 1893. Said claim shall be known as the "Sunny South lode." Located by F. Fagaly, J. A. Johnson, H. C. Leeds, Lee Walker, locators.

Filed for record December 30th, 1893, at 10 a. m., and recorded January 15th, 1894.

"EXHIBIT C."

The undersigned, —— —— citizens of the United States and over the age of twenty-one years, having complied with all requirements of the United States and territorial laws now in force relative
75 to mineral locations, and with all local customs and regulations in force relative to such locations, ha- located, and do hereby claim the right of discovery and location, fifteen hundred (1500) linear feet on and along this lode, vein, deposit of mineral bearing rock in place, together with three rundred feet of surface ground along and on each side of said 1500 feet. The claim hereby located is situate in the Cochiti mining district, county of Bernalillo, Territory of New Mexico, and is more particularly described as follows:

Beginning at a monument of stones (monument No. 1), erected on said lode, lead and deposit, said monument No. 1 being the north end monument of this claim and being the center of the north end line of said claim; thence west 300 feet to a monument of stones (No. 2); thence south 1500 feet to a monument of stones (No. 3);

thence east 300 feet to a monument of stones (No. 4), said monument No. 4 being the south end monument and the center of the south end line of this claim; thence 300 feet to a monument of stones (No. 5); thence north 1500 feet to a monument of stones (No. 6); thence west 300 feet to the place of beginning.

And for further description the lode is of grayish quartz, from three to five feet wide, and can be traced for 1000 yards. Dips into the mountain.

This claim was located July 10th, A. D. 1893, and shall be known as the Sampson mine. A copy of this notice is placed on monument No. — in the center of the claim by a pine tree with bark off on the south side.

CHAS. PILKEY,
BEN JOHNSON,
HENRY LOCKHART,
Locators.

76 Notice posted on the claim in presence of
ADA PILKEY,
LEE DUDLEY,
Witnesses.

(Endorsed on back: Notice of mining location. Name of claim, "Sampson." Name of locators, Charles Pilkey, Ben Johnson, Henry Lockhart. Filed for record this — day of —— A. D. 189–. ——, recorder. Territory of New Mexico, county of Bernalillo. This instrument was filed for record on the 9th day of December, 1893, at 11 o'clock a. m. Recorded in volume F of mining records of said county, folio 7. J. W. Harris, recorder.)

And thereafter, on, to-wit, the 20th day of January, 1896, there was filed in the office of the clerk of the said court in the said cause, a motion to strike amended bill from file, which said motion is in words and figures following, towit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the District Court.

HENRY LOCKHART }
vs. } No. 3888.
JAMES Q. WILLS ET AL. }

Now come the defendants in the above entitled cause, by their solicitors, and move the court to strike from the files thereof the amended bill of complaint filed by the plaintiff herein, for the following reasons:

Because at the time the court sustained the demurrer to the original bill filed in this cause, the plaintiff was given —— days within which to file an amended bill and said complainants failed to file

the same within said time and never acquired any leave of the court for filing the same at any other time, and that the same is
77 therefore irregularly upon the files in said cause.

(Signed) CHILDERS & DOBSON,
Solicitors for Defendants.

(Endorsed: No. 3888. In the district court, county of Bernalillo. Henry Lockhart *vs.* J. Q. Wills, *et al.* Filed in my office this 20th day of Jan. 1896. O. N. Marron, clerk.)

And thereafter, at the regular term of the district court of the second judicial district of the Territory of New Mexico, begun and held within and for the county of Bernalillo, on the 10th day of April, 1896, the same being the thirty-fifth day of the said term, the following, among other proceedings, were had and entered of record:

Present: The Honorable Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico, and judge of the second judicial district court thereof.

HENRY LOCKHART
vs.
JAMES Q. WILLS ET AL. } No. 3888. Chancery.

At this day this cause is heard upon the demurrer of the respondents to the amended bill of complaint herein, and the court being fully advised of and concerning the same;

It is ordered, adjudged and decreed that the said demurrer be and it is hereby sustained, with leave to the said complainant to amend as he may be advised.

And thereupon comes the complainant and filed herein his second amended bill of complaint, and on motion of complainant
78 It is ordered that the said respondents be and they are hereby ruled to plead to said second amended bill of complaint within ten days.

And thereafter, to-wit, on the 10th day of April, 1896, there was re-filed in the office of the clerk of the said court in the said cause, the second amended bill of complaint and exhibits thereto attached, which said second amended bill of complaint is in the same words and figures as the first — second amended bill of complaint heretofore filed.

And thereafter, on the 14th day of April, 1896, there was filed in the office of the said clerk of said court, the demurrer of defendants to the second amended bill of complaint, which said demurrer is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

In the District Court, Second Judicial District.

HENRY LOCKHART, Complainant,
vs.
H. C. LEEDS, J. A. JOHNSON, JULIA A. JOHNSON, CHARLES PILKEY, Samuel Dunlap, Lee Walker, William B. Childers, Edward W. Dobson and Chas. Bonsall, and J. Q. Wills, Defendants.

And now come the above named defendants, H. C. Leeds, J. A. Johnson, Julia Johnson, J. Q. Wills and Chas. Bonsall, by their solicitors, W. B. Childers and E. W. Dobson; and the defendants, Chas. Pilkey and Lee Walker, by their solicitor, W. C. Heacock, and defendants W. B. Childers and E. W. Dobson in their own proper persons, by protestation, not confessing or acknowledging any of the matters and things in said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, and demur to said amended bill, and for
79 cause of demurrer allege the following:

1. Because the bill does not allege that the defendants, Dunlap, Johnson, Leeds and Walker, entered in and upon said mining claim at any time prior to the tenth day of October, 1893; that is to say, within three months after said mine is alleged to have been located under the name of Sampson.

2. Because it appears from the allegations in complainant's amended bill that no valid location notice was ever posted upon the surface of said claim or recorded in the recorder's office of the proper county, as required by law.

3. Because it does not appear from said amended bill that complainant and his co-locators ever did the work required by law to be done within three months after taking possession of said claim, or otherwise complied with the requirements of the law, as to perfecting mining locations.

4. Because the agreement alleged to have been made between complainant and said Johnson with one Pilkey was subject to revocation by either party thereto at any time, and the facts alleged in the amended bill amounted to an abandonment of said alleged Sampson claim under the terms of said alleged agreement.

5. Because it does not appear from said amended bill when the complainant acquired an undivided interest in said alleged grant with the heirs of Antonio Lucero, deceased, or what the nature, extent and amount of said interest is, or through what mean conveyance it was acquired.

6. Because it does not appear that at the time the alleged entry by defendants Dunlap, Walker, Leeds and Johnson was made
80 on said mining claim, that the complainant or his co-locators under the alleged Sampson location were in possession of the

said mining claim, or any part thereof or had any lawful right to the possession thereof.

7. Because it does not appear from the allegations in said amended bill that the defendants are not co-tenants with the heirs of Antonio Lucero, deceased, and have a larger interest and a better right to the possession of the surface ground of said claim than the complainant.

8. Because ownership in said alleged grant confers no interest in the mineral thereon, or the right to mine the same.

9. Because the complainant's remedy is at law and the amended bill does not state a case for a court of equity.

Wherefore these defendants demur to said amended bill and to all the matters and things contained therein and pray the judgment of this honorable court, whether they shall be compelled to make any further or other answer thereto; and pray to be dismissed with their reasonable costs in this behalf sustained.

CHILDERS & DOBSON,
Solicitors for Defendants.

W. B. Childers, of lawful age, counsel for defendants, certifies that the foregoing demurrer is, in his opinion, well founded in point of law.

(Signed) W. B. CHILDERS.

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

W. B. Childers, being duly sworn, upon oath deposes and says that he is a counsel for the defendants for whom the foregoing demurrer is filed, and that said demurrer is not interposed for delay.

(Signed) W. B. CHILDERS.

81 Subscribed and sworn to before me this — day of —, A. D. 1895.

—— ——.

And thereafter, to-wit, on the 28th day of April, 1896, there was filed in the office of the said clerk of said court, the petition on intervention of Joel Parker Whitney, which said petition is in words and figures following, to-wit:

In the District Court, County of Bernalillo.

HENRY LOCKHART, Complainant,
vs.
H. C. LEEDS, J. A. JOHNSON, JULIA A. JOHNSON, His Wife; J. Q. Wills, Charles Pilkey, Samuel Dunlap, Successor in Interest of Frank Fagaly, Deceased; the Heirs and Legal Representatives of Lee Walker, Deceased; William B. Childers, Edward W. Dobson, and Chas. Bonsall, Receiver, Defendants. } In Equity.

The Petition of Intervention of Joel Parker Whitney in the Above Entitled Suit Now Pending in the said Court.

Your petitioner, Joel Parker Whitney, a resident of Rockland, in the county of Placer and State of California, presenting this petition to the Hon. Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico and judge of the said district court, thereupon shows and alleges as follows:

1. At the time when as alleged in the bill of complaint in the said suit, the defendant Charles Pilkey, first entered upon the tract of mineral land described in the said bill under the designation of the "Sampson mine," and for upwards of ten years continuously immediately before that time, your petitioner was seized and possessed of all and singular a certain tract of land known as the Canada de Cochiti grant, situate in the county of Bernalillo and Territory of New Mexico,
82 and bounded on the north by a prehistoric stone ruin, in the vicinity of the Potrero de las Vacas, on the east by the river commonly called the Rio Grande, on the south by the Indian pueblo of Cochiti, and on the west by a range of mountains known as the Sierra de Jemez, which said tract of land last described was thereupon and upwards of ten years ago, your petitioner then and there being in actual possession thereof, claiming the same as his property, surveyed by authority of the Government of the United States at your petitioner's special request and at his sole expense, and was thereupon, as surveyed, platted and laid down upon the public governmental maps under the designation of the Canada de Cochiti grant.

2. All and singular the said tract of land known as the Canada de Cochiti grant was granted by the King of Spain, through his governor of New Mexico, to one, Antonio Lucero, in the year 1728, and the said grantee was thereupon duly put into juridicial possession of all and singular the said granted premises, in the same year, and thereafter continuously from the said year 1728, with occasional brief interruptions caused by Indian hostilities and depredations and continuing only during the time thereof, the said tract of land has been possessed and claimed, first by the said grantee, and since his death, which occurred prior to the year 1760, by his descendants

(his lawful heirs) and their assigns, and by your petitioner as purchaser of the said granted tract from the said heirs and assigns, up to the time of the grievances hereinafter set forth; such claim and possession being under the assertion of the said grant title.

83 3. Your petitioner in acquiring his title aforesaid to the said granted premises, intended to acquire, and believed until lately that he had acquired the title to the whole thereof, except a few small strips of agriculture lands, parcel of the said premises, which are held and occupied in severalty by divers persons deriving title under the said grant, each and all of which said strips are situate wholly outside of the particular land and premises affected by the said suit; but your petitioner alleges, on his information and belief, that certain persons unknown to your petitioner now claim to be entitled to divers small undivided shares in the said granted premises as tenants in common of the said premises with your petitioner, but he is unable more particularly to state what persons so claim and what undivided shares of the said premises are claimed by them or any of them, except that he is informed and believes that Bernard S Rodey and Mariano S. Otero, both of the city of Albuquerque, county of Bernalillo, Hannah Harris, whose residence is unknown to your petitioner, Thomas Lowthian and Charles H. Toll. of the city of Denver and State of Colorado, Levi Hughes and John W. Akers, of the city of Santa Fé and Territory of New Mexico, and all parties to the said suit; claim to have purchased small undivided shares in the said granted tract of land.

4. However, your petitioner alleges that he is seized and possessed of an undivided moiety and upwards of the said granted tract of land and has been so seized and possessed for upwards of ten years last past, and, upon his information and belief, he further alleges that he is and for the said period of time has been seized and possessed of upwards of nine undivided tenth parts of the same.

84 5. About two years before the said defendants, Charles Pilkely, or any or more of the others of the said defendants, or the said complainants ever entered upon or possessed or operated or in any manner claimed the land and premises which are the subject of the said suit, or ever did concerning the same any matter or thing alleged in the said bill or in any of the pleadings in the said suit, and while the said parcel of mining land which is the subject of the said suit was in fact vacant, although in the constructive possession of your petitioner, your petitioner, together with the said Bernard S. Rodey and Hannah Harris and the said holders of the said strips in severalty —, duly presented to the Court of Private Land Claims of the United States, the said grant or private land *claims of the United States, the said grant or private land* claim and prayed its consideration and confirmation thereof, in an appropriate suit to that end, wherein your petitioner and his said co-petitioners therein were plaintiffs and The United States of America was defendant, and in the suit last mentioned such proceedings were thereupon had, after due proofs and hearing, that the said Court of Private Land Claims on the — day of ——, 1894, passed its final de-

cree therein confirming the said grant, but, in and by said decree fixing its boundaries on the north by an east and west line drawn east from certain ruins on the mesa of Cochiti, on the east by the said Rio Grande, on the south by the Indian pueblo of Cochiti, and on the west by a line drawn south from the said last mentioned ruins to an east and west line protracted, conformably to the north boundary of the said Indian pueblo of Cochiti, to the Rio Grande.

85 6. Feeling aggrieved by the said decree, in so far as the same by its terms restricted the boundary of the said grant to limits different from those claimed as aforesaid by your petitioner and his said co-petitioners, they, with a view to a modification of the said decree by making the same conformable to the terms of the said grant in respect of the boundaries thereof, that is to say with a view to obtaining a decree confirming the said grant with the boundaries thereof as hereinbefore set forth, duly appealed from the said decree of the Court of Private Land Claims to the Supreme Court of the United States; their said appeal bearing date the — day of ——, 1895, and being and now remaining duly docketed in the said Supreme Court as of the October term thereof, A. D. 1894.

7. The said appeal is now pending in the Supreme Court of the United States, unheard and undetermined, and operates as a supersedeas of the said decree so appealed from, and the said grant remains *sub judice* and the same has been *sub judice* in the political department of the Government from a long time prior to that date of the said official survey, and no part of the said tract of land within the boundaries thereof hereinbefore first described, and within the said grant or private land claim, to the extent that the said grant or private land claim is asserted by your petitioner and the said other claimants thereof by their said possession and claim, by the said official survey, by their said suit in the Court of Private Land Claims and by their said pending appeal, is, or ever has been part of the public domain of the United States, nor is nor ever has been subject to the general mining laws or other general land laws of the United States or to any claims or pretenses founded thereon.

86 8. All and singular the parcel of mining land described in the said bill of complaint and other pleadings in the said suit now pending in this court, including what is therein referred to as the "Sampson mine" and also what is therein referred to as the "Washington mine," is situate wholly within the said Canada de Cochiti grant as the same was granted and delivered in possession to the said Antonio Lucero aforesaid, and is now claimed by your petitioner and the said others in and by their said suit in the Court of Private Land Claims and their said appeal now pending in the Supreme Court of the United States.

9. Neither the said complainant nor the said defendants, nor any thereof, have or has any estate, right, title, interest, possession, claim or demand of, in or to, the said parcel of mining land described in the said bill and pleadings or either thereof by or under the mining or other land laws of the United States having reference to the public

domain nor under nor by reason of any pretended mining location or locations described in the said bill and pleadings.

10. Although your petitioner is informed by hearsay, that the said complainant and defendant or some of them have acquired by purchase certain very small and insignificant undivided shares in the said Canada de Cochiti grant, and by virtue of such purchase thereof claim to be entitled as tenants in common to the possession and enjoyment of said grant, yet your petitioner has no knowledge or information sufficient to form a belief whether or not in fact either the complainants or the said defendants or any thereof have ever made any purchase or claim under the said grant title, and he there-
87 fore prays that the complainant and the defendants and each of them may be compelled by this court to discover and disclose such interest and possession in or under the said grant title, as they or any of them respectively may have or pretend to have in common with your petitioner.

11. Except so far as he is informed by the said bill and pleadings your petitioner has no knowledge or information as to the alleged dealings by and between the complainant and the defendant Charles Pilkey or as to any agreement or combination alleged to be existing amongst the defendants to the prejudice of the complainant, but your petitioner alleged that both the complainant and the defendant as they several times set up in the said bill and pleadings entered upon said parcel of mining lands, which is the subject of this suit, and caused the same to be mined and worked and extracted large quantities of valuable gold and silver ore therefrom, to-wit, ore of the value of upwards of $20,000, and caused the said ore or a great part thereof after such extraction to be sold and disposed of in the city of Pueblo, Colorado, and elsewhere, and converted to their own use or to the use of some of them large sums of money derived from said sales and disposition, and the said defendants, as alleged in said bill and pleadings, are now in the actual occupation of the said parcel of mining land, both personally and by the instrumentality of the defendant Charles Bonsall, as receiver, under color of his receivership, created by this court, and, so being in such actual occupation of the said parcel of mining land, the said defendants are wasting and despoiling the same and without conducting mining thereof in a scientific, prudent and business like manner, are
88 devoting all their energies to the immediate extraction and conversion of the valuable ores most easily and immediately obtainable therein, with the intent of shipping and transporting the said ores to the said city of Pueblo and elsewhere, outside of the jurisdiction of this court, and there selling and disposing of the same and enjoying and appropriating the pecuniary proceeds thereof for their own exclusive use and to the exclusion of your petitioner from all participation or benefit in the premises.

12. While your petitioner admits that the complainant and defendants so far as they may be vested with any undivided shares in the said granted tract of land in common with your orator are entitled as such tenants in common to enjoy with your petitioner

the unity of possession of the said common property, he denies that, without his consent, they have, either as tenants in common or as trespassers, any lawful or equitable right either to exclude him from the possession or enjoyment of the said parcel of mining ground or from the said mine thereon or from participation in the working of the said mine, and in the profits thereof, or to appropriate or enjoy any part of the proceeds of the said mine, except such *pro rata* distributive shares thereof as may be conformable with their respective interest as tenants in common with your petitioner of said grant, and your petitioner further alleges that he has not consented to the occupation or working of the said parcel of mining land, or to the appropriation or conversion of any of the ores extracted therefrom, or the proceeds of any such ores by the complainant and the defendants or by any thereof; but he hereby offers to such of the defendants as may be tenants in common with him of the said
89 grant his co-operation and participation in the working and developing of the said mine and his due and equitable contribution to the reasonable expenses attending the same; insisting, however, that out of the net proceeds of such mining operations, such of the said defendants as are tenants in common of the said grant should receive only their just and equitable proportion, according to their respective shares as such tenants and no more, and your petitioner should receive in like manner his own just and equitable proportion.

13. Notwithstanding the hearsay information imparted to your petitioner as aforesaid as to the claim and pretense of the complainant and defendants or some of them that they are tenants in common with your petitioner of said grant, your petitioner alleges, upon his information and belief, that neither the complainant nor defendants nor any one or more of them have or has any estate right, title, or interest, possession, claim or demand in law or in equity, of, in or to the said grant or the said parcel of mining land or any share or interest therein, but that they are all and singular mere trespassers and intruders upon the said grant and parcel of mining land, without title or right or color of title or right, and that they neither have nor pretend to have, either jointly or severally, any pretense or shadow of title except the several mining locations described in the bill of complaint and pleadings, and further, that under the said pretended mining location of the "Washington mine," the defendants, in utter disregard of the fact that the said parcel of mining land is *sub judice* upon the said appeal, are now wrongfully engaged in the said mining, and in the conversion of the said extracted ores and the proceeds thereof, and they
90 as well as the complainant, give out and threaten that they will henceforth continue to mine upon the said parcel of mining land and extract and convert the ores thereof.

14. The said parcel of mining land is of very little value, except for the purpose of mining, and for that purpose it is of exceedingly great value, and the defendants by their tortious acts aforesaid are wasting and destroying the essential substance of the said land and

they threaten to continue the said tortious acts, and they are not responsible pecuniarily for the wrong and injury to your petitioner, which they are so committing and intending to commit.

15. Your petitioner, protesting that, by virtue of his title aforesaid, he has the immediate right to have and enjoy, mine and operate the said parcel of mining land and the said mines thereon as tenant in common, of the said grant, and to receive appropriate and enjoy his due and equitable share of the issue and profits thereof, further alleges that, independently of the question of his mere legal right or possession of the said land, he has, in view of the premises hereinbefore stated and especially in view of the said pending appeal, and the grounds upon which it is founded, a reasonable and equitable expectancy that the said decree of the Court of Private Land Claims, will by the decree of the Supreme Court of the United States upon the said appeal be so far modified that the said grant or private land claim will be finally confirmed with boundaries as hereinbefore first stated, so as to cover an area of land inclusive of the said parcel of mining land, and further that, upon the final confirmation of the said grant, upon the said appeal, your petitioner and the other tenants in common thereof will be lawfully entitled to mine upon the said parcel of mining
91 land and to extract and appropriate all the gold, silver and other metals therein, for their own use, to the exclusion of the complainant and the defendants and all other strangers to the said grant title; and he submits to your honor, that, pending the said appeal and while the said grant remains *sub judice* thereunder, it is inequitable that the complainant and the defendants or any other stranger to the said grant title should be permitted lawlessly to open and work mines upon the said parcel and mining land or to extract or convert ores therefrom, and thus waste and destroy, to the prejudice, wrong and injury of your petitioner, the very substance of the subject matter involved in the said appeal.

16. Your petitioner has repeatedly notified the complainant and the defendants and their agents of his interest, right and claim in the premises and requested to be admitted to the due enjoyment thereof, and he has notified the Pueblo Smelting and Refining Company, a corporation created under the laws of the State of Colorado, and doing business in the said city of Pueblo, and which, your petitioner had been informed, was dealing with the defendants on the subject of the purchase from them of ores extracted from the said parcel of mining land, not to turn over to the said defendants any proceeds of such ores and not to deal in such ores without your petitioner's consent, but both the complainant and the defendants have denied and refused to your petitioner any possession of the said parcel of mining land and to any participation in the mining thereof or in the profits of such mining, and the defendants, notwithstanding the protest and notice of your petitioner in that behalf, have since insisted on dealing or attempting to deal respecting the said
92 ores with the said Pueblo Smelting and Refining Company, and ever since the entry upon the said mining land by the

defendant Charles Pilkey *have* set forth in the said bill, and ever since the defendants entered upon the same premises pretending to make thereon a location of the "Sampson mine" and a location of the "Washington mine" respectively, your petitioner has been and he still is wrongfully excluded by the complainant and defendants from the said parcel of mining land and from mining thereon and from any participation whatever in the product, issues or profits thereof.

16. Your petitioner is with- adequate remedy at law in the premises.

17. Your petitioner alleges upon his information and belief, that the said parcel of mining land has, by order of this court, in a certain suit in equity therein depending, but *to* the particulars whereof your petitioner is not informed, been placed in the possession of the defendant Charles Bonsall, as receiver of this court, and the same is now nominally in his official custody, as such, but the said receiver is co-operating with the said other defendants in the operation of the said mine upon the said land; and your petitioner is advised by counsel and submits to the court that because the said parcel of mining land is in the custody of the law, he cannot in the present circumstances maintain respecting the same an action of ejectment against any of the parties to this suit.

18. By reason of the premises, your petitioner and the other cotenants of the said grant and co-claimants under the said private land claim are lawfully and equitably entitled to the immediate possession of the said parcel of mining land and to an im-

93 mediate and preferential status as claimants thereto, and in case the said parcel of mining land, as a result of the said decree in the Court of Private Land Claims or of the said appeal therefrom, should become a part of the public domain, they will thereupon become also, lawfully and equitably, entitled to the exclusive expectant right to uphold, continue and perfect the said possession and claim and, upon the foundation of such possession and claim, to locate as a mining claim the said parcel of mining land and the mineral lode therein, under the mining laws of the United States.

Wherefore your petitioner prays, that as an intervenor, he may by order of this court be made a party to this suit and that by due process to that end, the complainant and defendants therein may be required to answer all and singular the allegations of this petition; that the complainant and each and all of the defendants may be required to disclose and discover what if any shares or interest they have or claim respectively of, in or to the said grant in common with your petitioner, and may be compelled to account to and with your petitioner for and respecting all ores extracted from the said parcel of mining land and all proceeds of such ores; that, upon such an accounting, it may be ascertained and decreed what part of the net proceeds of such ores justly and equitably belongs to your petitioner and that the payment thereof to him may be ordered and compelled; that pending this suit some suitable person, disinterested

and impartial, may be appointed receiver of the said parcel of mining land and of all the proceeds thereof and may be authorized to operate the said mine under the direction of the court, and may be required to deposit in the court to the credit
94 of this suit the net proceeds of such mining; that the distributive share of your petitioner as well as the distributive shares of the other parties who shall appear to be entitled in the premises, in the said proceeds, may be ascertained and paid accordingly; that by order of this court, your petitioner, his agents and attorneys, may be permitted at all reasonable times to visit and inspect the said parcel of mining land and the said mine and the operations thereof and all the books and papers in the hands of such receiver or of his agents concerning the same; that the said receivership may be continued until the determination of the said appeal or the further order of this court in the premises.

That it may be declared and decreed that your petitioner and the other tenants in common of the said grant are equitably entitled to the exclusive possession of the said parcel of mining land and to the right of mining thereon the gold and silver and other metals both immediately and in the case that upon the said appeal the said decree of the Court of Private Land Claims shall be so modified by the decree of the Supreme Court of the United States and to confirm to the said grantee, his heirs and assigns, an area of land including the said parcel of mining land; that it may be also declared and decreed, that in case the said decree of the Court of Private Land Claims should be affirmed on the said appeal or the said appeal should be dismissed, your petitioner and his co-tenants of the said grant are entitled to the preferential right to occupy and hold the said parcel of mining land under the general mining laws of the United States, by conforming to the provisions of the said laws as well as of the laws of the said Territory in that behalf, that, at the termina-
95 tion of the said receivership so to be created in this suit, the receiver may be ordered and directed to deliver possession of the said parcel of mining land to your orator and the other tenants in common of the said grant, that pending this suit, the complainant and the defendants, except the said receiver Bonsall, may by writ of injunction issuing out of this court and under its seal addressed to the said Henry Lockhart, H. C. Leeds, J. A. Johnson, Julia A. Johnson, his wife, J. Q. Wills, Charles Pilkey, Samuel Dunlap, successor in interest to Frank Fagaly, deceased, their heirs and legal representatives of Lee Walker, deceased, William B. Childers, Edward W. Dobson and Charles Bonsall, receiver, be restrained from entering upon the said parcel of mining land, and from mining thereon and from extracting ores therefrom, and from shipping, transporting, or intermeddling with any metallic or other products of the said premises and from selling or attempting to sell any such ores or product, and from demanding or receiving any pecuniary or other proceeds of ores from the said premises, and from demanding or receiving any rents, issues or profits of the said premises, and from in any manner interfering with the said parcel of mining land

or any mining operation thereon or any business pertaining thereto; and that your petitioner may have such other and further relief in the premises as may be just and equitable, together with his costs.

This petition is exhibited by your petitioner in his own behalf as well as in the behalf of all others in like circumstances who shall come in and contribute to the expenses of this intervention.

All of which is respectfully submitted, &c.

(Signed) JOEL PARKER WHITNEY, *Petitioner.*

96 (Signed) JOHN H. KNAEBEL,
Solicitor for Petitioner.

Santa Fe, New Mexico.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

John H. Knaebel, being duly sworn, deposes and says that he is the solicitor for Joel Parker Whitney, the above named petitioner, that the said petitioner is now absent from the Territory of New Mexico on the Atlantic sea board; that this verification is made by this deponent because of such absence and because the exigencies of this intervention require speedy action and do not admit of further delay; that the foregoing petition is true of this deponent's own knowledge except as to those matters herein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(Signed) JOHN H. KNAEBEL.

Subscribed and sworn to before me this 6th day of April, A. D. 1896.

(Signed) NELLIE PRESTON,
Notary Public.
[NOTARIAL SEAL.]

My commission expires December 26, '97.

(Endorsed: No. 3888. In the district court. Henry Lockhart *vs.* H. C. Leeds *et al.* Petition of intervention of Joel Parker Whitney. Filed in my office this April 18th, 1896. O. N. Marron, clerk.)

And thereafter, to-wit, on the 28th day of April, 1896, there was filed in the office of the said clerk of said court, a suggestion on foot of petition of intervention, which said suggestion is in words and figures following, to-wit:

District Court, County of Bernalillo.

HENRY LOCKHART }
vs.
H. C. LEEDS ET AL. }

97 *In re* intervention of Joel Parker Whitney.

Now comes the said intervenor, and on the foot of his petition of intervention filed in this cause, on the 18th day of April, A. D. 1896,

informs the court that he has just been informed that the receivership heretofore vested in the defendant Charles Bonsall, as stated in the said petition, has been terminated by the discharge of the said Bonsall from the said office; and he prays that, under his said petition, Edward W. Dobson or some other suitable person may be appointed receiver of the property here in controversy.

(Signed) JOEL PARKER WHITNEY,
(Signed) By JOHN H. KNAEBEL,
His Solicitor.

Dated Albuquerque, April 28, 1896.

(Endorsed: No. 3888. District court, county of Bernalillo. Henry Lockhart *vs.* (chancery) H. C. Leeds *et al.* Suggestion on the foot of petition of intervention. Filed in my office on this the 28th day of April. O. N. Marron, clerk.)

And thereafter, on, to-wit, October 11th, 1897, there was filed in the office of the clerk of the said *office*, in the said cause, a motion of plaintiff to consolidate causes 3888, 4273 and 4275, which said motion is in the words and figures following, to-wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the Second Judicial District Court.

HENRY LOCKHART, Complainant, }
vs. } No. 3888.
H. C. LEEDS ET AL., Defendants. }

HENRY LOCKHART, Plaintiff, }
vs. } No. 4273.
J. Q. WILLS ET AL., Defendants. }

98 HENRY LOCKHART, Complainant, }
vs. } No. 4275.
J. Q. WILLS ET AL., Defendants. }

Henry Lockhart, the said plaintiff and complainant, moves the court for an order that the said before named actions be consolidated and tried together, and that the plaintiff in said respective causes have leave to file an amended and supplementary complaint to said consolidated actions.

And for grounds of this motion shows unto the court that said actions all related to the same question, and are of a like nature and are brought by him, the said plaintiff therein, for the purpose of recovering from the said defendants therein the title and possession of the same mine, mining claim and property, with damages, and to enjoin and restrain the said defendants from mining and removing ores and mineral from the same.

(Signed) WARREN, FERGUSSON & GILLETT,
Attorneys for Henry Lockhart.

Copy of the above motion received this 9th day of October, 1897.

(Signed) CHILDERS & DOBSON,
Attorneys for Defendants.

(Endorsed: No. 3888. Filed in my office this October 11th, 1897. O. N. Marron, clerk.)

And thereafter, to-wit, at the regular term of the district court of the second judicial district of the Territory of New Mexico, begun and held within and for the county of Bernalillo, at the court house of the said county, on the 11th day of October, 1897, and being the seventh day of the said term, the following proceedings,
99 among others, were had and entered of record, to-wit:

Present: The Honorable Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico, and judge of the second judicial district court thereof.

HENRY LOCKHART *vs.* H. C. LEEDS ET AL. } No. 3888.

HENRY LOCKHART *vs.* H. C. LEEDS ET AL. } No. 4273.

HENRY LOCKHART *vs.* J. Q. WILLS ET AL. } No. 4275.

Upon motion — the said plaintiffs, in the three last above and foregoing causes.

It is ordered by the court that the said defendants in said causes show cause on November third, next, why said causes should not be consolidated.

And thereafter, on, to-wit, the 26th day of August, 1899, there was made and entered of record in vacation, an order of the court in said cause, which order is in the words and figures following, to-wit:

HENRY LOCKHART *vs.* J. Q. WILLS ET AL. } No. 4275.

This cause coming on for hearing upon motion of defendants to dismiss the same for the reasons set forth in their motion, and the court being fully advised and after hearing counsel for the respective parties, does sustain said motion, and said cause be and the same is hereby dismissed at the cost of the plaintiff, with leave to re-instate said cause upon the docket should the ejectment suit be decided in favor of plaintiff.

(Signed) J. W. CRUMPACKER, *Judge.*

100 And thereafter, to-wit, on the 26th day of August, 1899, there was made and entered of record, in vacation, an order of the court in said cause, sustaining defendants' demurrer to the second amended bill of complaint, which said order is in the words and figures following, to-wit:

HENRY LOCKHART
vs.
H. C. LEEDS ET AL. } No. 3888.

This cause coming on for hearing upon the demurrer filed by the defendants to the complainant's second amended bill of complaint, and the court, after hearing counsel for the respective parties, being fully advised, doth sustain said demurrer; and upon motion of defendants, said complaint is hereby dismissed, at the cost of the plaintiff, and that defendants recover their costs in said cause laid out and expended.

(Signed) J. W. CRUMPACKER, *Judge.*

And thereafter, to-wit, on the 12th day of October, A. D. 1899, there was filed in the office of the clerk of the said court in the said cause a motion for appeal, which said motion is in the words and figures following, to-wit:

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

In the Second Judicial District Court.

HENRY LOCKHART
vs.
H. C. LEEDS ET AL. } No. 3888. Chancery.

Now comes the plaintiff herein, by H. B. Fergusson, one of his attorneys, and prays an appeal to the supreme court of the Territory of New Mexico, from the order and judgment made and entered of record in the above entitled cause, on, to-wit, August 26th, 1899.

101 (Signed) H. B. FERGUSSON,
Attorney for Plaintiff.

(Endorsed: No. 3888. Filed in my office this October 12th, 1899. Harry P. Owen, clerk.)

And thereafter, on, to-wit, the regular term of the district court of the second judicial district of the Territory of New Mexico, begun and held within and for the county of Bernalillo, at the court house of the said county, on the 13th day of October, 1899, and being the twenty-third day of the said term, the following proceedings, among others, were had and entered of record:

Present: The Honorable Jonathan W. Crumpacker, associate justice of the supreme court of the Territory of New Mexico, and judge of the second judicial district court thereof.

HENRY LOCKHART
vs.
H. C. LEEDS ET AL. } No. 3888.

This cause coming on to be heard upon the motion and application of the complainant and plaintiff herein for an appeal of this cause to the supreme court of the Territory of New Mexico, it is hereby ordered by the court that said motion and application be granted, and the appeal in said cause is hereby allowed.

TERRITORY OF NEW MEXICO, } *ss:*
County of Bernalillo, }

Second Judicial District Court.

I, Harry P. Owen, clerk of the district court of the second judicial district of the Territory of New Mexico, within and for the county of Bernalillo, do hereby certify that the above and foregoing is a true and correct transcript of the record and proceedings had in
102 the cause lately pending in the said district court for the county of Bernalillo, wherein Henry Lockhart was the plaintiff, and H. C. Leeds, J. A. Johnson, Julia A. Johnson, J. Q. Wills, Charles Pilkey, Frank Fagaly, Lee Walker, and Charles Bonsall, receiver, W. B. Childers and E. W. Dobson, were defendants, as the same appears of record and from the files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court, this 9th day of December, A. D. 1899.

HARRY P. OWEN, *Clerk.*

103 And afterwards, on to-wit the said 21st day of December, A. D., 1899, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, an assignment of error, which said assignment of error, was and is in words and figures, following, to-wit:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1900.

HENRY LOCKHART, Plaintiff and Appellant,
vs.
H. C. LEEDS ET AL., Defendants and Appellees. } No. 868. Appeal from District Court, Bernalillo County.

Assignment of Errors.

Now comes the appellant, plaintiff below, and says there is manifest error in the record and proceedings in said cause in the court below, in this, to-wit:

1. That court erred in entering the order of dismissal of said action (Transcript of Record page 101).

2. The court errred in sustaining the demurrer of defendants below to the complaint, amended complaint and the second amended complaint (Record pp. 57 and 101)

3. The court erred in other proceedings in said cause apparent upon the record, (Transcript of Record pp. 100–82)

(Signed) WARREN & CHAVEZ,
Attorneys for Appellant.
FERGUSSON & GILLETT,
Attorneys for Appellant.

104 And afterwards, on to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fe, the seat of government, on the first Wednesday after the first Monday in January, the same being the 3rd day of January, A. D. 1900, on the thirtieth day of said regular term, the same being the 6th day of February, A. D., 1900, the following among other proceedings were had, to-wit:

HENRY LOCKHART, Appellant,
vs.
H. C. LEEDS ET AL., Appellees. } No. 868. Appeal from District Court, Bernalillo County.

This cause coming on to be heard upon the transcript of record assignment of errors and briefs of counsel, is argued by W. B. Childers, Esq., for appellees, and H. B. Fergusson, for appellants, and submitted to the court, and the court not being sufficiently advised in the premises, takes the same into advisement.

And afterwards, on to wit, the said regular term of the supreme court of the Territory of New Mexico, on the thirty-ninth day thereof, the same being the 24th day of August, A. D., 1900 the following amont other proceedings, were had and entered of record as follows, to wit:—

HENRY LOCKHART, Appellant,
vs.
H. C. LEEDS ET AL., Appellees. } No. 868. Appeal from District Court, Bernalillo County.

This cause having been argued by counsel, and submitted to and taken under advisement by the court upon a former day of
105 the present term, the court being now sufficiently advised in the premises, announces its decision, by Associate Justice Parker, Chief Justice Mills, and Associate Justices McFie concur-ing, affirming the judgment of the court below, for reasons stated in the opinion of the court on file; it is therefore considered and adjudged by the court, that the judgment of the district court in and for the county of Bernalillo whence this cause came into this court, be and the same, hereby is affirmed, and that in accordance therewith, it is considered and adjudged by the court that this cause — hereby dismissed at the cost of the said appellant, and that execution issue therefore, and it is so ordered.

And afterwards, on to-wit, the 5th day of August A. D. 1902, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, an order allowing an appeal to the Supreme Court of the United States, made in vacation, which said order is in words and figures, following, to wit:—

In the Supreme Court of the Territory of New Mexico.

HENRY LOCKHART, Appellant,
vs.
H. C. LEEDS ET AL., Appellees. } No. 868. In Chancery.

Now comes the appellant herein, by H. B. Fergusson his attorney and prays an appeal to the Supreme Court of the United States of America, from the order and judgment made and entered of record in the above entitled cause, on to wit, the 24th day of August, 1900.

H. B. FERGUSSON,
Attorney for Appellant.

106 This cause coming on to be heard upon the motion and application of the appellant in the above entitled cause for an appeal of this cause to the Supreme Court of the United States of America, from the order and decision of this court made and entered of record on the 24th day of August, 1900, it is hereby ordered by the court that said motion and application be and the same hereby is granted and allowed.

(Signed) WILLIAM J. MILLS,
Chief Justice of the Supreme Court of the Territory of New Mexico.

August 2nd, 1902.

And afterwards, on to-wit, at the said regular term of the supreme court, in vacation thereof, on the 5th day of August, A. D. 1902, there was entered of record the following order of allowance of an appeal, as follows, to-wit:

HENRY LOCKHART, Appellant
vs.
H. C. LEEDS ET AL., Appellee. } No. 868. Appeal from District Court, Bernalillo County.

This cause coming on to be heard upon a motion and application of the appellant in the above entitled cause, for an appeal of this cause to the Supreme Court of the United States, of America, from the order and decision of this court made and entered of record on the 24th day of August, 1900, it is hereby ordered, by the court, that said motion and application be and the same is hereby granted and allowed.

WILLIAM J. MILLS,
Chief Justice of the Supreme Court, Territory of New Mexico.

August 2nd, 1902.

107 And afterwards, on to wit, on the 24th day of August, A. D. 1900, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, an opinion by the court which said opinion was and is in the following words and figures, to-wit:—

108 In the Supreme Court of the Territory of New Mexico, January Term, 1900.

HENRY LOCKHART, Appellant,
vs.
H. C. LEEDS ET ALS., Appellees.
} No. 868. Appeal from District Court, Bernalillo County.

Warren & Chaves, and Fergusson & Gillett, attorneys for appellant.

Childers & Dobson, attorneys for appellees.

Statement of Facts

The appellant filed a bill in equity in this case on the 26th day of May, 1894, to which the defendants demurred and the demurrer was sustained. Thereafter he filed an amended bill, to which a demurrer was also filed and sustained, and on January, 6th, 1896, the appellant, filed a "second" amended bill, to which a demurrer was also filed, and was sustained by the court on the 16th day of August, 1899, and the case dismissed. From the action of the court in sustaining the demurrer to the second amended bill, this appeal was taken.

The second amended bill in substance alleges, that on May 7th 1893, the appellant entered into an agreement in writing with one Ben Johnson and Charles Pilkey, whereby the said Pilkey agreed with the appellant and Johnson to enter into a co-partnership for the purpose of discovering, locating and operating mining claims; that Pilkey should prospect and locate such veins, lodes and places as he may discover or know the existence of, containing valuable ores or minerals, in the name of and for the joint benefit of the parties thereto. The appellant and Johnson were to furnish certain articles therein mentioned, 25 lbs. of powder, 100 ft. of fuse, 1 box caps, 1 hammer, — lbs. of drill steel, 1 pick, and when he should have sunk or driven a shaft or tunnel 4 ft. by 6 ft. in the vein of mineral bearing quartz to a depth of twenty feet from the lowest level of the surface at its mouth such vein and locality to be designated by the appellant and Johnson, he was to receive
109 in addition, the sum of thirty dollars, less any moneys or provisions or other articles, except as above mentioned; that said work should begin within twenty days from the date of the agreement, and be prosecuted with due diligence to a completion and to the satisfaction of the said appellant and Johnson. Pilkey was to furnish the said appellant and Johnson, from time to time at their request, samples of all ores or minerals discovered or taken out of

any workings. It also provided that it should be at the option of said appellant and Johnson to continue the work or abandon any claims located, at any time they might deem proper. The agreement was to continue in force for one year from its date, and all discoveries or locations made during that time by said Pilkey were to be covered by the agreement. "Any concealment of a discovery or failure to locate a valuable mineral claim for the purpose of evading the terms of this agreement and defrauding the said second parties shall work a forfeiture of any right or interest direct or indirect, that such first party might have or afterwards obtain to and for the benefit" of said appellant and Johnson. This agreement was dated May 7th, 1893.

The bill alleges that the plaintiff and Johnson delivered the articles and provisions mentioned in the contract, and paid the money, and divers other sums of money to and for the said Pilkey, and in all respects kept and performed the said agreement upon their part. It further alleges, that under this agreement, Pilkey located a claim in the name of himself, the appellant, and Johnson, on July 10th, 1893, called it the "Sampson," and that a copy of the location notice is filed as Exhibit "B" to the bill; that he posted that location notice on the said claim, marked the boundaries on the ground, transmitted at the request of appellant and Johnson samples of the ore, and sunk a shaft or cut on said claim to the depth of ten feet, showing mineral in place within less than ninety days from the time of taking possession of said lode. It further alleges, that the discoverers and locators of said claim, not then knowing whether the said mineral was situated upon the public domain of the United States, and so free and open to location under the mining laws of the United States, performed the required acts of location under the said laws and the laws of the Territory and were ready, able and willing in all things to comply therewith, and would have done so, except for the fraudulent and unlawful acts of the defendants therein mentioned. The bill alleged the performance of every necessary act to constitute a valid location, except the recording in the proper recorder's office of the location notice. It further alleges, that on or about October 1st, 1893, the defendant Pilkey, while so in possession of the said lode, ledge or lead, under and in pursuance of said agreement, wrongfully and fraudulently conspired with the defendants Leeds, J. A. Johnson, Fagaley and Walker, to defraud the appellant and the said Johnson of their interest in and title to the said mines and minerals, discovered and possessed by them as aforesaid, of which the said Pilkey, as the partner and co-owner with your orator, was then in pursuance of said conspiracy and confederation in possession, and on, to-wit October first, 1893, the precise date whereof being unknown to your orator, an agreement was made and entered into by the defendants Fagaley, J. A. Johnson, Walker and Leeds, and the defendant Pilkey, by which it was agreed that the said Pilkey in violation and fraud of the rights of your orator in and to the said mine of which he was then in possession as aforesaid, by him discovered

and held under said agreement, should transfer, convey and deliver possession of said mine to the last named defendant without the knowledge or consent of your orator and the said Johnson, and that they should do and perform all other acts deemed necessary for that purpose. And the bill further states, "that the said complainant (meaning Pilkey) by an instrument in writing the precise terms of which are unknown to complainant the same being in possession of defendants or some of them, sold, transferred and conveyed to the defendants Fagaley, J. A. Johnson, Leeds and Walker an undivided four-fifths interest in said mine and mineral, the said Pilkey retaining an undivided one-fifth interest therein, which was conveyed to said Walker by said instrument and by him held in secret trust for said Pilkey, and in pursuance of said fraudulent combination and conspiracy, the defendants Frank Fagaley, J. A. Johnson, Lee Walker and H. C. Leeds, together with the defendant J. Q. Wills,
111 caused and procured the defendant Pilkey to stop work upon the said mines under his said agreement and to fail and neglect to record the said location notice, so by him posted thereon as aforesaid, and the said defendants or some of them wrongfully removed the said location notice from said claim and said defendants covered up or concealed the said workings thereon, theretofore done and performed by defendant Pilkey, and without the knowledge or consent of your orator and the said Johnson, entered into and upon the said lead, lode, ledge and deposit bearing gold and silver, and upon the said parcel or surface ground, including the same mentioned and described in said location notice, and known as the "Sampson mine," and denied and still deny that your orator had or has any interest therein, and thereafter, having so procured possession of the same, the said defendants in pursuance of said confederacy, caused to be posted upon said mine a location notice, and filed the same for record in the recorder's office of said county" etc., a copy of which is filed and made a part of the bill, etc., and "thereby said defendants claimed to have located the said lode for the benefit of themselves as locators * * * under the mining laws of the United States, and called and designated the same as the "Washington lode." The bill then alleges that the said defendants agreed among themselves as to the respective interest each of them should have in said location, and that the said Pilkey should be entitled to a one-fifth interest therein, but that the said last named interest should be claimed and held by said Walker in trust for him.

The bill then alleges that the ground upon which these locations were made is situated within the exterior boundaries of a tract of land claimed to have been granted in 1728, by the then Spanish authorities, to one Antonio Lucero, and that the same was, at the time of the making of said locations, claimed by certain persons under said alleged grant, and that claims were then, and at the time of the filing of said amended bill, pending in the United States Court of Private Land Claims, and undetermined; and further alleges, that neither the said

Antonio Lucero, nor his heirs or successors had become entitled
112 in law or equity to the minerals contained therein, and that by virtue of the location of the said "Sampson" claim by the said Pilkey, under the said agreement with the appellant, the appellant became and now is equitably entitled to the minerals contained therein, and had a paramount right and title in and to the same, as against the said defendants or any or either of them. It also alleges that the other defendants named in the bill claim some right or interest in and to said mining claim known as the Washington, derived through their co-defendants. It alleges that the mineral deposit so discovered by said Pilkey was not and is not subject to location as a mining claim under and in pursuance of the laws of the United States, because the same is situate within the said alleged private land grant, and that by virtue of the said prior discovery, possession and working of the said mining claim by the said Pilkey under said agreement, the appellant became and was and is equitably entitled to the minerals contained in said location as against the said defendants, or any other persons, except the Government of the United States. The bill also alleges, that the appellant, by virtue of conveyances, had acquired an undivided title and interest as tenant in common in said private land claim, superior to any title or right thereto on the part of the defendants, or either of them, and is lawfully entitled to enter upon and work the said mine.

The bill also alleges, that after the removal by the said defendants of the said location notice, posted as aforesaid by Pilkey, a copy thereof was procured by the appellant and filed and recorded in the office of the recorder of the county of Bernalillo in which the same was situate.

The bill further alleges, that the appellant, by virtue of the facts alleged in the said bill, became the equitable owner of the mineral in said claim, and had a preferential right to acquire the legal title to the same from the United States, and that the location thereof under the name of the Washington by the defendants was wholly inoperative and void, and that the said Pilkey, by reason of his participation in the said fraudulent conspiracy and combination,
113 by virtue of the said agreement with the appellant and Ben Johnson, had forfeited all right or interest, direct or indirect, in and to the said Sampson mine, and that the said defendants claimed that the said Washington location was a valid location and denied the appellant had any interest therein, and excluded him from the possession thereof. The bill also alleged the insolvency of some of the defendants, and that the appellant would suffer irreparable injury unless the defendants were enjoined from working the same.

The bill then prays for the appointment of a receiver to take possession of the said Sampson mine, and that the said transfer and conveyance executed by said Pilkey to said Fagaly, Leeds, J. A. Johnson, and Walker be declared fraudulent and void as against him, and that it be cancelled and annulled; and that the location notice of the Washington lode be decreed to be void and of no effect

as against the appellant; and that the defendants be enjoined from mining, working or removing from the said Washington lode any ore; and that he be decreed the equitable owner of the said ore and mineral contained therein; and also for general relief.

To this bill the defendants filed a demurrer, among others, upon the following grounds: That the bill did not allege that the defendants entered upon the mining claim within three months after the said mining claim is alleged to have been located under the name of the "Sampson;" that it appeared that no valid location notice was ever posted upon the surface of said claim or recorded in the recorder's office, as required by law; and because the agreement alleged to have been between plaintiff and Ben Johnson and defendant Pilkey, was subject to revocation by either party thereto at any time; and that the facts alleged in the amended bill amounted to an abandonment of said alleged "Sampson" claim under the terms of his alleged agreement; and because it did not appear from the allegations in the bill, that at the time of the alleged entry of the defendants on this exact mining claim, the complainant and his co-locators, under the alleged Sampson location, were — possession of the said mining claim or any part thereof, or had any lawful right to the possession thereof; and because the complainant's remedy was at law, and that the amended bill did not state
114 a case for a court of equity.

The assignment of error by the appellant are, that the court erred in sustaining the demurrer of the defendants to the plaintiff's "second" amended complaint, and ordering the dismissal of the said case.

Opinion of the Court.

PARKER, *J.:*

The question to be determined is whether the appellant has by his bill stated a case which entitles him to any relief in a court of equity. A suit in ejectment involving the same mining claim, which is the subject of the litigation, was before this court, and the opinion deciding it will be found reported under the title of Lockhart *vs.* Wills, 54 Pac. Rep. 336. The appellees contend that upon the allegations of the bill, the remedy of the appellant is at law, and not in equity. We think this contention is well founded, and that the action of the court in sustaining the demurrer was correct. In the case of Lockhart *vs.* Wills, *supra*, we held that the ground in controversy was subject to location under the mining laws of the United States. In that case it was stipulated by the parties that the decree of the Court of Private Land Claims within which it was alleged the ground in controversy was located, eliminated the mine from the grant. We held, however, that although that decree had not been rendered at the time *of* the attempted locations of the "Sampson" and "Washington" mines were made, nevertheless, the ground was subject to exploration, location and entry under the mining laws of the United States. After fully discussing the contention of the parties and the law applicable to the facts, we said: "We conclude

that they" (lands within unconfirmed Mexican or Spanish grants) "are not reserved lands and are 'lands belonging to the United States' within the meaning of section 2319 of the Revised Statutes of the United States." We deem it unnecessary to again discuss this question and refer to our opinion in that case.

The demurrer admits the truth of all the allegations in the bill which are well pleaded. If any of the allegations in the bill, however, are ambiguous, they are to be construed more strongly
115 against the appellant. "A demurrer only admits facts well pleaded: it does not admit matters of inference and argument, however clearly stated:" Dillion *vs.* Barnard, 21 Wall., 430. There must be sufficient equity on the facts of the bill to warrant the relief prayed for, and the material facts on which the plaintiff relies must be so distinctly alleged as to put them in issue. Harding *vs.* Handy, 11 Wheat. 103. "The rule is familiar that the court will refuse to decree unless the substantial ground work of the case on which the relief is sought is *distinctly* alleged in the bill:" Pelham *vs.* Edlmyer, 15 Fed. Rep. 262. "It may be affirmed as an elementary rule of the most extensice influence, that the bill should state the right, title or claim of the plaintiff with accuracy, and clearness, and that it should in like manner, state the injury or grievance of which he complains, and the relief which he asks of the court:" Story on Equity Plead. sec. 241. Applying these principles to the allegations of the bill, we find that the bill alleges that the defendant Pilkey under the contract between him and the appellant and Ben Johnson, loccated the "Sampson mine," and performed all the acts necessary to complete a valid location, except the filing of the location notice in the county recorder's office within ninety days after the making of the location, on July 10th, 1893. It alleges that the defendants caused and procured the defendant Pilkey "to fail and neglect to record the said location notice so by him posted thereon as aforesaid, and the said defendants or some of them wrongfully removed the said location notice from said claim, and after the removal of said location notice * * * a copy thereof was procured by your oratos * * * and the same was filed in the office of the recorder on December 9th, 1893." It fails to allege when the posted copy was removed, or when the copy filed for record was procured by the appellant. So far as the allegations of the bill are concearned, the copy may have been in possession of the appellant long before the expiration of the ninety days within which the law required it to be filed. It was certainly within the power of the defendant to have definitely alleged when he procured this copy, and thereby show, if such was the fact, that he did not file it sooner because he could not obtain it. He does not allege how or from whom he obtained it.

116 The failure to file a location notice for record works a forfeiture of a mining location, and leaves the claim open to relocation, Lockhart *vs.* Will, *supra.* There is no allegation in the bill showing that the appellant could not himself have filed this location notice for record within the ninety days. It contains no alle-

gation that appellant relied upon the defendant Pilkey to file it. It is true that there is an allegation that the defendants caused and procured the defendant Pilkey to fail and neglect to record it, but this in the absence of an allegation that the appellant was relying upon the defendant to file it, does not account for the delay in doing so until December 9th, following. The bill alleges "that on or about the first of October, 1893, the precise date thereof being unknown" to appellant, an agreement was made and entered into by some of the defendants with Pilkey who was then in possession of the mine, that he should transfer and deliver possession of the said mine to the last named defendant and Ben Johnson and by an instrument in writing, the precise terms of which he cannot set up, because it is in possession of the defendants, Pilkey, conveyed an undivided four-fifths interest in said Sampson mine to the defendants, retaining one fourth conveyed to defendant Walker to be held in secret trust by Walker for said Pilkey, and that in pursuance of said agreement they procured the defendant Pilkey to withhold said location notice from record." This allegation does not, however, excuse the absence of the allegations in the bill as to delay in filing the notice already pointed out.

The bill alleges that the defendants entered into the possession of the mine under this agreement, but it does not allege when the defendants so entered into possession of said mine. This is an important allegation. Appell-nt's counsel insists that possession was so taken after the expiration of the 10th day of October, within ninety days from the location of the "Sampson." There is no allegation in the bill upon which to base this contention. Counsel appeals to the first ground stated in defendants' demurrer as
117 establishing this fact. We do not know of any principle of pleading by which defective allegations in a bill can be aided by a demurrer filed to it.

2. Under the allegations of the bill, if the defendants, by collusion with Pilkey or otherwise, intruded upon the possession of the appellant, which the bill alleges was actually held by Pilkey under the terms of the contract, up to the time of the actual entry and exclusion of the appellant and his cotenant, Johnson, by the defendants, the appellant could recover possession in an action at law. This action could be sustained both against Pilkey and the defendants entering under him. If Pilkey made the agreement alleged in the bill, the defendant*d* became cotena-ts with the appellant. Pilkey could by the conveyance alleged in the bill only convey his undivided third interest, and ejectment lies against a cotenant, or a grantee of a cotenant attempting to hold adversely to his cotenants. Prior possession under such circumstances is sufficient to maintain ejectment. Freeman on Cotenancy and Part. sec. 290; Cristy *v.* Scott, 14 How., 282; Burt *v.* Panjaud, 99 U. S. 180; Campbell *v.* Rankin, 99 U. S. 261. In a similar case it is said: "Claiming, as both parties did, under Payne and Cook, the regularity of the location of the mining claims, are not in question, and when in 1862 the plaintiff purchased from one of the owners of the claim an un-

divided interest therein, and went into possession with his grantor and with others deriving title from the original locators * * * he became a tenant in common with those who were then the owners. He was such when the Union Gold and Silver Mining Company purchased the interest of other owners. By that purchase, that company succeeded to a tenancy in common with him and so did the defendant, when it became the purchaser. * * * The possession of his co-tenants was his possession. They held it for him until he was ousted. That this is a settled rule of law is not denied." Mining Co. *v.* Taylor, 100 U. S. 40. The only acts alleged in the bill as having been done by Pilkey which deprived the appellant of his rights are the surrender of the possession and the failure to record the location notice.

118 3. If Pilkey surrendered the possession prior to the 10th day of October 1893, the appellant would, in an action of ejectment, be excused from perfecting his location. In such a case the Supreme Court of the United States has said: "They could not be deprived of their inchoate rights by the tortious acts of others; nor could the intruders and trespasse-s initiate any rights which would defeat those of the prior discoverers." Erhardt *v.* Boare, 113 U. S. 534. "A location can only be made where the law allows it to be done. Ant attempt to go beyond that will be of no avail. Hence a relocation on lands actually covered at the time by another valid and subsisting location is void; and this not only against the prior locator, but all the world, because the law allows no such thing to be done." Balk *v.* Meagher, 104 U. S. 284. "The record shows actual possession in the appellees. which is *prima facie* evidence of title, and as we said in Lebanon M. Co. *vs.* Con. Rep. M. Co., 6 Colo. 380, 'entering upon premises in the actual possession of another for the purpose of performing the acts necessary to constitute location and possession, amounts only to a trespass, and cannot form the basis for the acquisition of a title.'" Weise *v.* Barker, 7 Colo., 178, 2 Pac. Rep. 921.

We think it clear that under the allegations of the bill the appellant could obtain the relief actually prayed for in an action at law. Neither the alleged contract of Pilkey with the defendants, or any other fact alleged would prevent him from obtaining a plain, speedy and adequate remedy by a suit in ejectment.

4. The allegations do not show such a state of facts as would justify the granting of an injunction or the appointment of a receiver. This relief could only be had, provided the bill contained proper allegations, and was filed in aid of a suit at law. Fussell *v.* Gregg, 113 U. S., 554–5; Hipp *v.* Babin, 19 How., 271; Parker *v.* Man'f'g Co., 2 Black 545; Grand Chute *v.* Winger, 15 Wal., 373; Lewis *v.* Cocks, 23 Wal., 466; Killian *v.* Ebbinghaus, 110 U. S., 568. A bill for injunction cannot be maintained simply as a substitute for an action of ejectment.

5. The bill prays that the Washington location be declared void, and for possession. The appellant now asks under the
119 prayer for general relief that the Washington location be held valid, and the holders thereof be held as constructive

truetess. The allegations in the bill do not justify any such relief. It is essential that the facts and circumstances which constitute the fraud complained of should be set out clearly, concisely and with sufficient precision to apprise the opposite party of *what he is called* upon to answer. 9 English Enc. of Plead. & Pr., 687 and many authorities there cited. Charging generally that what was done was "colorable fraud," "a breach of trust" and a "scheme" themselves are allegations of legal conclusion which a demurrer does not admit. Fogg. *vs.* Blair, 139 U. S., 127; Van Weel *v.* Winston, 115, U. S. 237; Brooks *v.* O'Hara, 8 Fed. Rep, 532; Phelps *v.* Elliott, 35 Fed. Rep. 455; Lafayette Co. *vs.* Neeley, 21 Fed. Rep. 744. For the purpose of sustaining this contention, the appellant now insists that the intrusion of the defendants upon the possession of appellant took place after the tenth day of October. As already shown, if it took place before that date it would be tortious and the rights of the appellant would not be thereby affected. The bill is fatally defective for not alleging conclusive- whether it took place before or after that date. In the prayer for general relief, only such relief as is agreeable to the case made by the bill can be granted. English *v.* Foxall, 2 Peters, 612; Hobson *v.* McArthur's Heirs, 16 Peters 182; Boon *v.* Childs, 10 Peters, 177. "Now it is perfectly clear, according to the practice of the court, where a specific relief is prayed for, even though there be a prayer for general relief, the court cannot grant relief which is inconsistent with, or entirely different from that which is asked for." Wilson *v.* Graham, 4 Wash. C. C., 53; 30 Fed. Cases No. 17,804. "It is true that there was a prayer for general relief, but relief given under the general prayer must be agreeable to the cases made by the bill." Allen *v.* Pullman Palace Car Co., 139 U. S. 662; Hayward *v.* National Bank, and authorities cited, 96 U. S., 614; Georgia *v.* Stanton, 6 Wall., 77. "In order to entitle a plaintiff to a decree under the general prayer, different from that specifically prayed, the allegations relied upon must not only be such as afford a ground for relief sought, but they must have been introduced into the bill for the purpose of showing a claim for relief and not for the mere purpose of corroborating the plaintiff's right to the
120 specific relief prayed, otherwise the court would take the defendant by surprise, which is contrar*t* to its principles." 1 Daniel's Ch. Pr. 386; Curry *v.* Lloys, 22 Fed. Rep. 264. "But, even, when a prayer for general relief is sufficient, the special relief prayed at the bar must essentially depend upon the proper frame and structure of the bill; for the court will grant such relief only, as the case stated will justify; and will not ordinarily be so indulgent, as to permit a bill framed for one purpose to answer another, e-pecially if the defendant may be surprised or prejudiced thereby." Story Eq. Plead. sec. 42; 3 Ency. Pl. & Prac., 350, *et seq.*, and notes. The allegations contained in the bill are not adapted to the relief now urged by counsel for appellant in his brief. The bill was not framed to secure the holding of Pilkey or any other defendant as a trustee under the Washington location.

6. The bill prays that the instrument of writing alleged to have

been executed by the defendant Pilkey, conveying to his co-defendants interest in the "Sampson" location, be declared fraudulent and *void* as against the plaintiff, and that it be cancelled and annulled. This agreement was not upon record, and is not a cloud upon the title of the plaintiff. It in no way prevents him from recovering possession in an action at law. It could convey as against the appellant, only the interest which the defendant Pilkey had in the Sampson, Hartford &c. Ore Co., *v.* Miller, 3 Mor. Min. Rep., 353. "The facts set forth in the bill of the plaintiff clearly show that he has a plain, adequate and complete remedy at law for the injuries of which he complains. He alleges that he is the owner in fee, as trustee, of certain described lands in Iowa, and his injuries consist in this: That the defendants are in the possession and enjoyment of the property claiming title under certain documents purporting to transfer the same, which are fraudulent and void. If he is the owner in fee of the premises, he can establish that fact in an action at law, and if the evidences of the defendants' asserted title are fraudulent and void, that he can also show. There is no occasion for resort to a court of equity, either to establish his right to the land or to put him in possession thereof." Whitehead *vs.* Shattuck, 138, U. S. 150.

121 7. It is also contended that this bill can be sustained under section 4010, of the Compiled Laws of New Mexico, relating to suits to quiet title. We do not think that the allegations contained in the bill bring appellant's case within the provisions of this statute. They do not show why he cannot recover in a suit at law. Neither does the allegation of membership of an interest in an unconfirmed grant entitle the appellant to such relief. Pinkerton *vs.* Ledoux, 129 U. S. 351; Astiasaran *vs.* Santa Rita Mng. Co., 148 U. S. 80. These cases hold that until the question of title to a- unconfirmed grant had been settled by Congress or the tribunal established by it for that purpose, it cannot be contested in the ordinary courts of justice.

For the reasons above stated, we are lead to the conclusion that the ruling of the court below in sustaining the demurrer to the second amended bill of complaint and dismissing the suit was correct, and the decree of the court is therefore affirmed.

FRANK W. PARKER,
Associate Justice.

We concur:
WILLIAM J. MILLS, *C. J.*
JOHN R. McFIE, *A. J.*

Crumpacker J. having heard the case belos, and Leland J., being absend did not participate in this decision.

122 TERRITORY OF NEW MEXICO, } ss:
Supreme Court, }

I, —— ——, clerk of the supreme court of the Territory of New Mexico do hereby certify that the foregoing 121 pages contain a full true and perfect copy of the record and proceedings, pleadings and opinion filed in the above entitled cause which is transmitted to the Supreme Court of the United States, in accordance with an order granting an appeal herein taken.

Witness, my hand and the seal of the supreme court of the Territory of New Mexico, this the 6th day of August A. D., 1902.

Seal Supreme Court, Territory of New Mexico.

JOSÉ D. SENA,
Clerk Supreme Court of New Mexico.

123 THE UNITED STATES OF AMERICA:

To H. C. Leeds, J. A. Johnson, Julia A. Johnson, James Q. Wills, Charles Pilkey, Frank Fagalay, Lee Walker, and Charles Bonsall, receiver; W. B. Childers, and E. W. Dobson, Greeting:

You and each of you are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington on the first Monday of October next, and to enter your appearance within sixty days from the date hereof, pursuant to an appeal sued out of the supreme court of the Territory of New Mexico, wherein Henry Lockhart was appellant, and H. C. Leeds *et al.* are appellees, to show cause in any there be, why the judgment rendered against said appellants as mentioned in said order of appeal should not be corrected, and why speedy justice should not be done in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this the 7th day of August, A. D., 1902.

Seal Supreme Court, Territory of New Mexico.

WILLIAM J. MILLS,
Chief Justice of the Supreme Court, Territory of New Mexico.

Service of a copy of the above citation acknowledged this 19th day of August, 1902.

W. B. CHILDERS,
Att'y for Appellees.

[Endorsed:] (Original). No. —. In the Supreme Court of the United States, October term, 1902. Henry Lockhart, appellant, vs. H. C. Leeds *et al.*, appellees. Citation.

Endorsed on cover: File No. 18,653. New Mexico Territory Supreme Court. Term No. 121. Henry Lockhart, appellant, vs. H. C. Leeds *et al.* Filed Aug. 25, 1902.